SUPREME COURT, U. S.
FILED
JUL 18 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

Nos. 73-1095, 73-1016

ABE LAVINE, individually and as Commissioner of the Department of Social Services of the State of New York,

Appellant,

against

SYLVIA SHIRLEY, individually and on behalf of her minor dependent children, TAMMY LYNN and LISA MARIE, and on behalf of all others similarly situated;

ELIZABETH ANDERSON, individually and on behalf of her minor dependent child, JOANNE, and on behalf of all others similarly situated;

JANE DOE, individually and on behalf of her minor dependent child, KIRSTEN WYNN, and on behalf of all others similarly situated,

Appellees,

and

JOHN LASCARIS, individually and as Commissioner of the Department of Social Services of the County of Onondaga,

Appellee.

JOHN LASCARIS, individually and as Commissioner of the Department of Social Services of the County of Onondaga,

Appellant,

against

SYLVIA SHIRLEY, individually and on behalf of her minor dependent children, TAMMY LYNN and LISA MARIE, and on behalf of all others similarly situated;

ELIZABETH ANDERSON, individually and on behalf of her minor dependent child, JOANNE, and on behalf of all others similarly situated;

JANE DOE, individually and on behalf of her minor dependent child, KIRSTEN WYNN, and on behalf of all others similarly situated,

Appellees,

and

ABE LAVINE, individually and as Commissioner of the Department of Social Services of the State of New York,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK, FILED DECEMBER 28, 1973 AND JANUARY 12, 1974, PROBABLE JURISDICTION NOTED JUNE 10, 1974.

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BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
BATAVIA, N. Y. 14020
716-343-0457

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Letter Dated February 5, 1974

SUPREME COURT OF THE UNITED STATES
Office of the Clerk
Washington, D. C. 20543

COPY

February 5, 1974

Mr. James K. Evans
Chief Deputy Clerk
U. S. District Court
Northern District of New York
Utica, New York 13503

Re: Abe Lavine, etc. v.
Sylvia Shirley, etc., *et al.*,
No. 73-1016

(Your #72-CV-163)

Dear Sir:

I have your letter of January 31, 1974, in regard to the above-entitled case.

On the cover of the Order to Show Cause filed under date of March 20, 1973, there is endorsed "Order Authorizing Plaintiffs to Amend Complaint" filed April 17, 1973. The order itself appears at page 199.

Very truly yours,

MICHAEL RODAK, JR.,
Clerk.

By
(Miss) JENNIE H. LAZOWSKI,
Assistant.

cc:
Allan W. Rubenstein, Esq.
Principal Attorney

JHL:mhl

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NORTHERN DISTRICT OF NEW YORK

Civil No. 72-CV-163

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Complaint

Copy

U. S. District Court
N. D. of N. Y.
Filed
Mar 23 1972
At . . . o'clock . . . . M.
J. R. Scully, Clerk

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

SYLVIA SHIRLEY, individually and on behalf of her minor dependent children, TAMMY LYNN and LISA MARIE, and on behalf of all others similarly situated;

ELIZABETH ANDERSON, individually and on behalf of her minor dependent child, JOANNE, and on behalf of all others similarly situated;

JANE DOE, individually and on behalf of her minor dependent child, KIRSTEN WYNN, and on behalf of all others similarly situated,

Plaintiffs,

vs.

GEORGE K. WYMAN as Commissioner of the Department of Social Services of the State of New York,

and

JOHN LASCARIS as Commissioner of the Department of Social Services of the County of Onondaga; individually and in their official capacities,

Defendants

Index No. 72CV.163

I

PRELIMINARY STATEMENT

This is a class action brought by plaintiff mothers of needy and dependent children on behalf of themselves, their minor children and all others similarly situated. Plaintiff mothers have been required by the Department of Social Services to file petitions of non-support in Family Court against the fathers of the named children as a condition of eligibility for public assistance in the Aid to Dependent Children category. Having filed such petitions plaintiff mothers are required to participate in proceedings in Family Court under the threat of loss of Aid to Dependent Children benefits.

The requirement of filing and prosecuting petitions of non-support as a condition of eligibility for Aid to Dependent Children has been held illegal as in conflict with the Social Security Act by the United States Supreme Court. Such a requirement violates Federal Regulations promulgated under the Social Security Act. Further, such a requirement violates the rights of plaintiffs and their minor children and all others similarly situated, which are secured by the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

Termination of plaintiff Doe's daughter Kirsten and the threat of termination of the other named plaintiffs should they withdraw their petitions cause the plaintiffs to suffer grave harm to their health, safety and spirits. The harm is immediate and if the relief prayed for herein is not granted, will become irreparable.

II

NATURE OF ACTION

This is a class action brought by plaintiffs on behalf of themselves and as next friend of their children and on behalf of all others similarly situated for a Declaratory Judgment pursuant to Title 28 U.S.C. 2201, 2202, to declare that New York Department of Social Services Regulation 369.2(f)(3)(ii)(e) on its face and as interpreted and applied by the defendants has denied plaintiffs and others similarly situated public assistance in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution, the Social Security Act (42 U.S.C. 601 *et seq.*), the regulations promulgated thereunder and Title 42 U.S.C. Sections 1983 and 1988 insofar as Social Services Regulation 369.2(f)(3)(ii)(e) on its face and as applied provides that a mother must file and prosecute a petition of non-support against the father of her children as a condition of her and her children's eligibility for public assistance.

III

JURISDICTION

Original jurisdiction is conferred upon this court by 42 U.S.C. Section 1343(3)(4) which authorizes federal courts to enforce rights, privileges and immunities derived from 42 U.S.C. Section 1983, the Fourteenth Amendment, 28 U.S.C. Section 1331 relating to actions arising under any federal statute, and 28 U.S.C. Section 2201 relating to Declaratory Judgments.

This action also seeks a temporary restraining order and a preliminary and permanent injunction to enjoin the defendants from denying public assistance to plaintiffs' needy and dependent children and all others similarly situated for their mothers' refusal to file and prosecute petitions of non-support on the ground that New York State Department of Social Services Regulation 369.2(f)(3)(ii)(e) violates the Fourteenth Amendment of the United States Constitution, and Title 42 of the U.S.C. Section 601-609, 1983 and 1988.

IV

THREE JUDGE COURT

Plaintiffs respectfully request that a three-judge district court be convened. Such a court is required under 28 U.S.C. Section 2281 because plaintiffs seek to enjoin the enforcement of New York State Department of Social Services Regulation 369.2(f)(3)(ii)(e) on the ground that the regulation contravenes the Fourteenth Amendment to the United States Constitution.

V

PLAINTIFFS

Plaintiffs are citizens of the United States and of the State of New York.

Plaintiff Sylvia Shirley lives in Syracuse, New York, with her two children, Tammy Lynn, age two years, and Lisa Marie, age eight months. The whereabouts of her husband is unknown. Plaintiffs have no income, resources or source of support other than their public assistance grant.

Plaintiff Elizabeth Anderson lives in Syracuse, New York with her daughter Joanne, age five years. She is separated from her husband who pays child support in the amount of $100.00 a month. For the balance of her and her daughter's needs plaintiff Anderson is forced to rely on Aid to Dependent Children benefits in the amount of $103.00 a month.

Plaintiff Jane Doe lives in Syracuse, New York with her three children, Robin, age fifteen, Paul, age twelve, and Kirsten Wynn, age one year. Plaintiff Doe is divorced from the father of Robin and Paul. Plaintiff Doe is the sole support of her three children. She receives no support payments from her former husband, nor does she receive support from Kirsten's father. Plaintiff Doe is employed part time on a varying schedule and has been forced to rely on Aid to Dependent Children to support her three children.

Plaintiffs are members of a class composed of New York resident families, otherwise eligible for benefits under the Aid to Dependent Children program administered by defendants, who have been required to file petitions of non-support against the fathers of their children as conditions of eligibility for public assistance by defendants acting pursuant to Social Services Regulation 369.2(f)(3)(ii)(e) of the State of New York.

VI

CLASS ACTION

This is a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure in that persons in the class are so numerous that joinder of all members is im-

practical. There are questions of law or fact common to the class; the claims of the representative parties are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class.

VII

DEFENDANTS

Defendant George K. Wyman is Commissioner of the Department of Social Services of the State of New York, and Defendant John Lascaris is the Commissioner of the Department of Social Services of the County of Onondaga, in which capacities they are charged with administering the welfare laws and policy of said state, including Department of Social Services Regulation 369.2 (f)(3)(ii)(e).

VIII

STATEMENT OF CLAIM

Plaintiff Shirley has been separated from her husband since July 1971. She and her two infant children have been living variously with her mother and friends in Syracuse during this time with the exception of two weeks in September when she and her husband attempted to reconciliation. Because of the inability of her mother, who is on welfare, and her friends to continue to provide for her family, Mrs. Shirley applied for welfare in January 1972. She was denied on the grounds that she could work. Thereafter she reapplied.

This time she was denied because she refused to file a petition of non-support against her husband. By March 7, 1972 her situation was desperate and she again applied for welfare. She was again told by an intake worker for the

Department of Social Services that she would have to file a petition of non-support against her husband in order to be eligible.

Mrs. Shirley did not wish to file such a petition because she hopes that she and her husband will eventually be able to reconcile their differences. If she were to file such a petition any chance of reconciliation would be foreclosed since Mr. Shirley would hold her personally responsible for bringing the law to bear upon him and would file for divorce. Additionally Mrs. Shirley fears that such a filing would result in a child custody battle, since Mr. Shirley has told her that he would come back and take the children away from her should she prosecute him for non-support. Such an abrupt change of living habits would be extremely detrimental to the best interests of Mrs. Shirley's infant children who have already suffered extensive disruption of their young lives due to their parents' domestic difficulties.

However because of the brutal need of her children and herself, Mrs. Shirley was forced to comply with the requirement of the Department of Social Services and file a petition against her husband on March 8, 1972. At the time of filing, the Clerk of the Family Court was informed that Mrs. Shirley was filing the petition solely because the Department of Social Services required her to before they would grant her public assistance. (See Affidavit of David Contento, Appendix A.)

Plaintiff Shirley and her children are now receiving Aid to Dependent Children in the amount of $120.00 per month.

Plaintiff Anderson has been separated from her husband since September 1970. Her husband, who is a student living on a fellowship, has been supporting her and their child

in the amount of $100.00 a month. She applied to welfare on January 15, 1972. Notwithstanding the fact that she told the intake worker that her husband was paying support of $100.00 a month, she was required to file a petition of non-support against her husband. Mrs. Anderson did not wish to file such a petition because her husband was already supporting her to the full extent of his ability given the limited amount of his fellowship. On March 8, 1972, Mrs. Anderson, through her attorneys Onondaga Neighborhood Legal Services, Inc., informed the Family Court that she wished to withdraw her petition. To date she has not been informed by the Family Court whether such a withdrawal will be allowed. She has also informed the Department of Social Services or her withdrawal request. Because of previous statements by employees of the Department of Social Services, she is fearful that her grant and the grant to her child will be terminated because of her withdrawal request.

Plaintiff Doe and her children have received Aid to Dependent Children benefits since September 1971. Kirsten has been part of the assistance unit since October 1971, when her father ceased supporting her. On or about February 1, 1972, Mrs. Doe received a letter from the Onondaga County Department of Social Services informing her that Kirsten's assistance would not be paid until Mrs. Doe took Kirsten's father to Family Court and a support order was established. (A copy of the letter appears in Appendix B.) Kirsten's grant was terminated notwithstanding the fact that Mrs. Doe had filed non-support proceedings against Kirsten's father in the Fall of 1971 and that the matter had been placed on the held calendar by the Family Court in December, 1971.

Because the procedures for termination required by the Second Circuit's order in Almenares v. Wyman (December 8, 1971) were not followed in terminating Kirsten and because of the pendancy of a contempt motion against Commissioners Wyman and Lascaris for failure to follow the Second Circuit's order, Kirsten was restored to the assistance unit on February 22, 1972. However, a notice of termination of Kirsten was sent to Mrs. Doe that same day. A local hearing, as required by Almenares v. Wyman, was held February 29, 1972. The decision of that hearing upheld the termination of Kirsten and required Mrs. Doe to file another petition of non-support in Family Court if she wished to have her daughter reinstated. (See Appendix C, Notice of Decision Following Review dated 2/29/72.)

Because Mrs. Doe had filed a petition of non-support previously which had come to naught, and because the prospect of further dealings with Kirsten's father caused her severe emotional strain and distress, Mrs. Doe refused to refile in Family Court. Kirsten has received no Aid to Dependent Children benefits from March 1, 1972 to this date.

On March 1, 1972 Mrs. Doe's attorneys wrote to Leonard Koldin, Chief Welfare Attorney for the Onondaga County Department of Social Services, concerning Kirsten and the continued application of the NOLEO policy which had been declared illegal by the United States Supreme Court. Mr. Koldin refused to reinstate Kirsten. A copy of that letter and the Syracuse Herald-Journal article referred to therein are included as Appendix C.

IX

FIRST CAUSE OF ACTION

"A state eligibility standard that excludes persons eligible for assistance under federal Aid to Dependent Children standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." Townsend v. Swank, United States Supreme Court decided December 20, 1971 (40 U.S.Law Week 4080).

The Social Security Act requires every state to seek contributions from persons legally responsible for the support of children receiving assistance. The requirement is known as NOLEO (Notice to Law Enforcement Officials). 42 U.S.C. Section 602(a) (11). The United States Department of Health, Education and Welfare has promulgated regulations which make it clear that NOLEO provisions are not to be used as conditions of eligibility:

> a) The appropriate law enforcement officials will be notified in writing promptly as soon as Aid to Dependent Children has been furnished in respect to a child who is believed to have been deserted or abandoned by a parent. *This requirement has no effect upon the determination of eligibility.* It is a requirement upon the agency, and is fulfilled by providing the . . . information after a family has been found eligible and been granted assistance . . . (emphasis supplied) 45 C.F.R. Section 235.70.

New York's NOLEO requirement (1.18 N.Y.C.R.R. 369.2(f) (3) (ii) (e)) is being used by the Onondaga Department of Social Services to require an applicant for Aid to Dependent Children to file a petition of non-support against the father as a condition of eligibility for Aid to

Dependent Children for the mother and her children as well. The United States Supreme Court in affirming the decisions of three-judge courts in Oregon and California has determined similar NOLEO provisions to be invalid as setting up an additional requirement of eligibility not called for by the Social Security Act. Meyers v. Juras, United States Supreme Court (petition for rehearing denied, November 15, 1971) and Taylor v. Martin, United States Supreme Court (decided December 7, 1971). These affirmances make it clear that an applicant for public assistance may not be required to file a petition of non-support. Further, under these decisions an applicant cannot be compelled to cooperate in providing information about the absent parent as a condition of eligibility.

On its face and as applied by the Onondaga County Department of Social Services the New York NOLEO provision is invalid as establishing an additional eligibility requirement not provided for by the Social Security Act.

PLAINTIFFS' SECOND CAUSE OF ACTION

Defendants' action in erecting an additional requirement of eligibility constitutes a denial of equal protection guaranteed by the Fourteenth Amendment to the United States Constitution, in that it creates an invidious and unjustifiable distinction. New York's action in this case requires that impoverished mothers institute proceedings against their children's fathers; no such requirement is imposed on the well-to-do. Members of the plaintiffs' class have been required by the Onondaga County Department of Social Services to file petitions of non-support against their husbands where husband and wife are living at home in domestic harmony and have been forced to apply for welfare due

to the temporary unemployment of the husband. Marriages of the well-to-do are not driven asunder by forcing one spouse to prosecute another. Classifications based on wealth have long been recognized as peculiarly obnoxious to the principles of equality enshrined in the Fourteenth Amendment.

PLAINTIFFS' THIRD CAUSE OF ACTION

The New York practice offends principles of due process and equal protection because it establishes a classification based upon conditions which the affected individuals have no power to alter. The terminated plaintiffs include the one year-old child of Jane Doe, who has been denied the very means of subsistance for reasons which are wholly beyond her control; that is, her mother's refusal to reinstitute proceedings against her father.

Defendants' termination, or threat of termination unless plaintiffs prosecute, of their public assistance has caused them extreme hardship, suffering and anxiety, including inadequate food, clothing and shelter and the inability to pay debts. Plaintiffs have suffered severe and irreparable injury to their health, well-being and family life as a result of the NOLEO Regulation and will continue to suffer until such time as that regulation is declared unlawful.

In this action under 42 U.S.C. Section 1983, no exhaustion of state remedies is required; no adequate remedy at law is available to plaintiffs. Administrative Fair Hearings held by the State Department of Social Services provide no remedy because State Fair Hearing officers are not empowered to declare state regulations illegal.

X

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray on behalf of themselves and all others similarly situated that this Court:

1. Assume jurisdiction of this cause and convene a three-judge court pursuant to 28 U.S.C. Sections 2281 and 2284.

2. Issue a temporary restraining order and preliminary injunction pursuant to 28 U.S.C. Section 2284, ordering the defendants to reinstate the plaintiff Jane Doe's daughter Kirsten and all others similarly situated members of the plaintiff's class to assistance to which they are entitled, meeting the requirements for a reasonable subsistance compatible with decency and health, and require continued assistance to plaintiffs' class should any member withdraw a petition of non-support which she had previously filed.

3. Enter a final judgment pursuant to 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the New York practices herein described in requiring plaintiffs to pursue non-support proceedings against the fathers of their children conflict with the Social Security Act of 1935, 42 U.S.C. Section 602, and the regulations promulgated thereunder by the Department of Health, Education and Welfare, and deny the plaintiffs and the class they represent due process and the equal protection of the laws guaranteed them by the Fourteenth Amendment to the United States Constitution.

4. Issue a permanent injunction restraining the defendants, their successors, agents and employees from terminating or denying public assistance to plaintiffs and the class they represent where such terminations or denials conflict with the Social Security Act of 1935, or deny equal protection of the laws in the manner described above.

5. Award the plaintiffs and the class they represent damages consisting of the public assistance to which they are entitled, but for the illegal and unconstitutional termination of benefits.

6. Award the plaintiffs their costs and disbursements incurred herein.

7. Award the plaintiffs reasonable attorney's fees.

8. Award the plaintiffs and all others similarly situated such further and alternative relief as may seem just and equitable.

Dated: March 21, 1972.

ONONDAGA NEIGHBORHOOD LEGAL SERVICES, INC.,

By: Douglas A. Eldridge, *of Counsel*,
Attorneys for the Plaintiffs,
633 South Warren Street,
Syracuse, New York 13202,
Telephone: (315)475-3127.

(Verification Omitted in Printing.)

Order to Show Cause

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

Upon the verified Complaint and Affidavits of Sylvia Shirley, Elizabeth Anderson, and Jane Doe, it is

ORDERED that the defendants George K. Wyman and John Lascaris show cause in the Court Room of the United States Post Office, Clinton Square, Syracuse, New York, on the 10th day of April, 1972, at 10:00 A.M. or as soon thereafter as Counsel can be heard, why an Order should not issue or the Court take such other action as shall grant the plaintiffs herein the following relief:

1. An Order pursuant to Rule 23(c) (1) of the Federal Rules of Civil Procedure determining that this action may properly proceed as a class action pursuant to Rule 23(a) (b)(2) because: the class consisting of all mothers of needy and dependent children who would not be required to file petitions for non-support against the fathers of their children as a condition of eligibility for Aid to Dependent Children but for the operation of 18 N.Y.C.R.R. 369.2 (f) (3)(ii)(e), is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class; and the parties opposing the class have acted on grounds generally applicable to the class, making appropriate final injunctive and declaratory relief with respect to the class as a whole;

Order to Show Cause.

2. The convening of a statutory court of three judges for the purpose of hearing and determining this application for a preliminary and permanent injunction and this cause, in accordance with the provision of Title 28, U.S.C. Sections 2281 and 2284, which require the convening of such a court when an interlocutory and permanent injunction are sought to restrain a state officer from the enforcement of a state-wide regulation that is alleged to conflict with the Constitution of the United States. The preliminary and permanent injunction are sought to restrain the defendants, who are state officers, their successors in office, agents and employees, and all other persons in active concert and participation with them, from refusing to grant the plaintiffs and all persons similarly situated Aid to Dependent Children benefits in the amount to which they are entitled on the ground they have refused to prosecute their children's fathers for non-support.

3. A temporary restraining order pursuant to Title 28, U.S.C. Section 2284(3) restraining the defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them, from refusing, pending the hearing and determination by a three-judge court convened pursuant to Title 28 U.S.C. Section 2281 and 2284, to grant the plaintiffs and all persons similarly situated Aid to Dependent Children on the ground that they refuse to prosecute their children's fathers for non-support. Plaintiffs seek this relief for themselves, their children, and all others similarly situated on the grounds that:

(a) Plaintiffs and all others similarly situated are each suffering, or are threatened with imminent suffering,

of irreparable damage in that they are without means to provide themselves with the basic necessities requisite for a minimum standard of decency and health and will continue to suffer even greater deprivation unless they are granted Aid to Dependent Children without being required to prosecute non-support actions.

(b) The issuance of a Temporary Restraining Order will not cause undue inconvenience or loss to the defendants but will prevent irreparable damage to the plaintiffs and others similarly situated;

(c) The regulation that deprives plaintiffs and all others similarly situated of Aid to Dependent Children violates the Fourteenth Amendment of the Constitution of the United States, the Social Security Act of 1935, and regulations promulgated thereunder;

(d) Plaintiffs have no adequate remedy at law, as set forth more fully in the verified Complaint and the affidavits of the plaintiffs attached hereto.

IT IS ORDERED that service of this Order on defendants on or before 5 o'clock on the 27th day of March, 1972, be deemed sufficient. Any memoranda of law to be filed on or before April 3, 1972.

Done and ordered at the Federal Building, Auburn, New York, on this 23rd day of March, 1972, at .... o'clock in the ....noon.

s/ EDMUND PORT,
United States District Judge.

Answer on Behalf of State Defendant

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

George K. Wyman, Commissioner of Social Services of the State of New York, by Louis J. Lefkowitz, Attorney General, Sidney L. Grossman, Assistant Attorney General in Charge, Syracuse, New York, of counsel, one of the defendants above named, answering the complaint herein, alleges as follows:

1. DENIES each and every allegation of plaintiffs' complaint designated numbers 'I', 'IV', 'VI', 'VII'.

2. ADMITS allegations of plaintiffs' complaint designated number 'II'.

3. DENIES information sufficient to form a belief as to allegations of plaintiffs' complaint designated numbers 'V', and 'VIII'.

4. As to allegation number 'III' of plaintiffs' complaint, the first paragraph is ADMITTED, the second paragraph is DENIED.

5. As to allegation number 'IX', the first paragraph is ADMITTED and all other paragraphs of said allegation numbered 'IX' are DENIED.

6. Defendant, George K. Wyman, as Commissioner of the Department of Social Services, further DENIES each and every allegation in the complaint, not herein admitted, controverted or specifically DENIED.

DEFENSES

FOR A FIRST, SEPARATE AND DISTINCT DEFENSE, DEFENDANT, GEORGE K. WYMAN, AS COMMISSIONER, ALLEGES THAT THE PLAINTIFFS' CLASS ACTION SHOULD NOT BE MAINTAINED AS THEY HAVE ADEQUATE ADMINISTRATIVE REMEDIES AVAILABLE TO THEM.

Public assistance to a welfare recipient may not be terminated until such person has been afforded the opportunity of a Fair Hearing. (*Almenares* v. *Wyman*, 453 F.2d 1075, 2nd Circ., decided 12-10-71.)

Where a welfare recipient is successful at a Fair Hearing, assistance would be continued; if not successful, his remedy would be the commencement of an Article 78 proceeding under New York Law.

FOR A SECOND, SEPARATE AND DISTINCT DEFENSE TO SAID COMPLAINT, DEFENDANT, GEORGE K. WYMAN, AS COMMISSIONER, ALLEGES:

Section 369.2 (f) (3) (ii) (e) of Title 18 N.Y.C.R.R. is consistent with the Social Security Act and therefore valid.

The primary purpose of the Aid to Families with Dependent Children (hereinafter A.F.D.C.) program as implimented by the Social Security Act (Title 42 U.S.C. §§ 601-610), is to provide financial aid to needy and dependent children. *Doe* v. *Shapiro*, 302 F. Supp. 761 (D.C. Conn. 1969). To effectuate this program, the Social Security Act provides that each state is obligated to provide aid to families with dependent children with reasonable promptness. Title 42 U.S.C. § 602 (a) (10).

One of the problems that has arisen as a result of this program, is that many legally responsible parents have neglected their duty to provide for the support of their dependent children. In promulgating Section 369.2 (f) (3) (ii) (e) of Title 18 N.Y.C.R.R., defendant, Wyman intended to prohibit this practice from occurring. Section 369.2 (f) (3) (ii) (e) states the following:

> "(e). Abandonment or desertion. (1) All situations in which a parent is absent from the home and failing to comply with a court order for support, or to fully support without court order, shall be classified as abandonment or desertion, and referred to the law enforcement officer in accordance with department regulations.
>
> (2) A parent or other relative applying for or in receipt of an ADC grant for a child who has been deserted or abandoned shall be informed that a report of the desertion or abandonment will be made to the law enforcement official within 30 days of such occurrence or of the initial granting of assistance.
>
> (3) A parent or other relative shall be required to furnish pertinent information in the location and prosecution of a deserting or abandoning parent.
>
> (4) A parent or other relative who fails to cooperate with the social services official in the location and prosecution of the deserting or abandoning parent shall be ineligible for public assistance; and such failure to cooperate shall, in appropriate cases, be brought to the attention of the Family Court for whatever action the Court may wish to take under such circumstances; such persons' needs shall be excluded

from consideration and the needs of the remaining family members shall be met in accordance with Part 352 of this Title: except that, if there is no other eligible relative in the home, such needs of the remaining family members shall be met as a protective payment in accordance with Part 381 of this Title.

(5) The agency shall fully utilize the services of the department's bureau of registry and location of deserting parents in its efforts to locate the missing parent."

Under no circumstances does the above regulation terminate financial assistance to needy and dependent children. Only the parent or other relative who fails to cooperate with the Social Services official in the location and prosecution of the deserting or abandoning parent, shall be ineligible for public assistance. 18 N.Y.C.R.R., 369.2 (f) (3) (ii) (e) (4).

In the case of *Lascaris* v. *Wyman*, 67 Misc. 2d 17 (1971), New York State Supreme Court Justice John R. Tenney, in his opinion, stated the following:

"In considering the problem of collection from abandoning parents, it was the clear intention of Congress to give the States additional tools and to impose further obligations upon them to assure the determination of legal responsibility for support and to make efforts to make these collections. The committee believes it is essential to make certain that all legally responsible parents of sufficient means make their appropriate contribution to the support of their children." (S. Report No. 744, 90 Cong. and 1st Sess [1967], reprinted in U.S. Code Cong. and Admin. News 1st Sess. [1967], pp. 2834, 2997). *Ibid.* at 19.

In *Wyman* v. *James*, 400 U.S. 309, 91 S. Ct. 381 (1971), the United States Supreme Court considered the validity of a New York State statute requiring home visitation and the State Commissioner's regulations applying it to the A.F.D.C. program.

In that case, a mother who had applied for A. F. D. C. for herself and her children, refused to allow a case worker to make a home visit to her home. The State thereupon denied further A.F.D.C. benefits to the mother and her children. She then brought suit in Federal District Court to compel further assistance.

The Supreme Court upheld this action as not being inconsistent with the program (42 U.S.C.A. 601 *et seq.*), and not violative of any constitutional right. The Court said at page 318-319,

> "The agency, with tax funds provided from federal as well as from state sources, is fulfilling a public trust. The state, working through its qualified welfare agency, has appropriate and paramount interest and concern in seeing and assuring that the intended and proper objects of that tax-produced assistance are the ones who benefit from the aid it dispenses. Surely it is not unreasonable . . . that the State have at its command a gentle means, of limited extent and of practical and considerate application, of achieving that assurance."

The cases of *Taylor* v. *Martin*, 330 F. Supp. 85 (N.D. Calif. 1971), U.S. Supreme Court (affirmed, December 7, 1971) and *Meyers* v. *Juras*, 327 F. Supp. 759 (D.C. Ore. 1971), U.S. Supreme Court (petition for rehearing denied, November 15, 1971) upon which plaintiffs rely heavily, may be easily distinguished from the instant matter.

In those cases, certain state regulations were declared invalid for the reason that they set up an additional requirement of eligibility for financial assistance. Both of these state regulations terminated A.F.D.C. benefits to the dependent children on the basis of a legally responsible parent's failure to cooperate. However, the New York regulation does not provide for termination of financial assistance to needy and dependent children at any time. Only the needs of the parent or other relative who fails to cooperate are excluded from consideration. 18 N.Y.C.R.R. 369.2 (f) (3) (ii) (e) (4).

THEREFORE, the paramount goal of the Social Security Act has not been violated by said regulation.

FOR A THIRD, SEPARATE AND DISTINCT DEFENSE TO SAID COMPLAINT, DEFENDANT, GEORGE K. WYMAN, AS COMMISSIONER, ALLEGES:

The Equal Protection Clause of the Fourteenth Amendment has not been violated by Section 369.2 (f) (3) (ii) (e).

There is a rational basis for the requirement that a parent or other relative be required to furnish information in the location and prosecution of a deserting or abandoning parent.

Again, the paramount goal of the A. F. D. C. program is to provide financial assistance to needy and dependent children. *Doe* v. *Shapiro*, *supra*. A parent who is capable of providing said support, should be required to do so. By requiring the furnishing of such pertinent information, the location and prosectuion of the parent shall be facilitated, and his obligation will be met. Therefore, the

burden of support will not rest solely upon the taxpayer.

Plaintiffs unrealistically contend that Regulation 369.2 (f) (3) (ii) (e) creates a classification based on wealth. However, the principles enunciated by the plaintiffs would, in fact, establish a special class of citizens.

New York State Supreme Court Justice Tenney, in *Lascaris* v. *Wayman*, *supra* at 22, held the following:

> "Public assistance is based upon the economic fact that all citizens need spending power and some may be cut off from acquiring it because of the exigencies of life. However, there is no need to create a special class of people with special rules. This is not only unfair to the society, it is also unfair to the recipient. He should accept responsibilities which are common to every other citizen in daily life. Requiring an applicant to answer pertinent questions to establish his need is no different than a questionnaire furnished to applicants for employment or other services."

Therefore, the regulation in question does not violate the Fourteenth Amendment, by discriminating against the parent or relative who is required to provide said information.

Furthermore, the constitutional rights of the children have not been violated for the reason that benefits to them do not cease under any circumstances other than need and dependency.

FOR A SEPARATE AND DISTINCT DEFENSE ARISING UPON THE FACE OF THE COMPLAINT HEREIN, DEFENDANT, GEORGE K. WYMAN, AS COMMISSIONER, ALLEGES:

That the facts set forth in said complaint are insufficient to state a claim upon which relief can be granted.

WHEREFORE, the defendant, George K. Wyman, as Commissioner, prays judgment and requests 1) that the New York practices set forth in the complaint requiring plaintiffs to pursue non-support proceedings against the fathers of their children be found not to be in conflict with the Social Security Act of 1935, 42 U.S.C. Section 602 and the regulations promulgated thereunder by the Department of Health, Education and Welfare, 2) that the complaint of the plaintiffs be dismissed on the merits, and for such other and further relief as to the Court may seem just and proper.

LOUIS J. LEFKOWITZ,
Attorney General,
Attorney for Defendant, Wyman,

By SIDNEY L. GROSSMAN,
Assistant Attorney General in Charge,
333 East Washington Street,
Syracuse, New York 13202.
Telephone: (315) 474-5951, Ext. 215.

(Verification omitted in printing.)

Answer on Behalf of County Defendant

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

John L. Lascaris, Commissioner of the Department of Social Services, County of Onondaga, individually and in his official capacity, by his attorney, Leonard C. Koldin, in answer to the complaint herein:

1. ADMIT the allegations contained in Paragraph VII of the complaint herein.

2. DENY each and every allegation of Paragraphs I, II, III, VI and PLAINTIFF'S SECOND CAUSE OF ACTION of the complaint herein.

3. As to Paragraph IV, argument was had before Judge Edmund Port of the United States District Court for the Northern District of New York on April 10, 1972. As a result of the argument, Judge Edmund Port has ordered a three judge panel be convened.

4. As to paragraph V, ADMIT to the first sentence thereof, and to the Paragraph pertaining to Sylvia Shirley and her two children; but DENY each and every allegation in the Paragraph pertaining to Elizabeth Anderson and Jane Doe, and as to the last Paragraph, DENY the allegation that plaintiff is required to file petitions of non-support against the fathers in order that the children receive public assistance.

5. As to Paragraph VIII, the defendant does not have sufficient information available to frame an answer to the allegations contained therein.

6. As to the FIRST CAUSE OF ACTION, Paragraph IX, ADMIT that the Social Security Act requires every state to seek contributions; but DENY that 18 N.Y.C.R.R. 369.2 (f)(3)(ii)(e) is the NOLEO requirement, and that the aforesaid section is similar to the Oregon and California NOLEO provisions, and DENY that the aforesaid section on its face and as used by the defendant establishes an additional eligibility requirement.

7. As to the THIRD CAUSE OF ACTION, DENY each and every allegation and conclusion contained therein; and specifically DENY that no exhaustion of state remedies is required; since there is an adequate remedy at law available to the plaintiffs under New York State Law.

FOR A FIRST, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, DEFENDANTS ALLEGE:

8. The complaint herein does not establish a cause of action, because none of the plaintiffs have standing to ask for the remedies requested in the complaint.

9. Sylvia Shirley, with her two children, Tammy Lynn, age two years, and Lisa Marie, age eight months, have been receiving full assistance allowable since the date Sylvia Shirley filed an application for assistance on March 8, 1972.

10. Elizabeth Anderson and her daughter, Joanne, age five years, have been receiving full assistance allowable since the date Elizabeth Anderson filed an application for assistance on January 18, 1972.

11. Jane Doe and her children have been receiving full assistance for a number of months. As to Kirsten, the department received information that she was receiving support from her father and consequently suspended assistance as to Kirsten only. Clearly then, the child Kirsten and the plaintiff, Jane Doe, do not qualify to be considered in the class of citizens for which this action was brought.

12. All plaintiffs including the child, Kirsten, are eligible for and have been receiving medical assistance and food stamps.

FOR A SECOND, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, DEFENDANTS ALLEGE:

13. If the plaintiffs herein had been denied Aid to Dependent Children, said plaintiffs would have had available an adequate remedy at law which must be exhausted before said plaintiffs can raise the unconstitutionality of the statutes of the State of New York.

14. The Social Welfare Law of the State of New York provides an adequate remedy, by means of a Fair Hearing, to those individuals who feel they have been aggrieved by the County interpretation of a State statute. Section 139-a, Sub-section 7, "Special provisions to avoid abuse of assistance and care", provides:

> "If an application is not acted upon by the public welfare official within thirty days after the filing of the application or if the applicant is determined by the public welfare official to be undeserving of and ineligible for assistance, the applicant may appeal to the de-

partment, which upon receipt of the appeal shall review the case, shall give the applicant making the appeal an opportunity for a fair hearing thereon and within thirty days render its decision. All decisions of the department shall be binding upon the public welfare districts involved and shall be complied with by the public welfare officials thereof."

15. The plaintiffs in this action have not availed themselves of this administrative procedure, primarily because they are receiving full assistance and have not been aggrieved by the local interpretation of the Commissioner for the Department of Social Services, County of Onondaga.

WHEREFORE, defendant respectfully requests that this court enter a judgment dismissing the complaint herein.

Dated: April 12, 1972.

LEONARD C. KOLDIN, ESQ.,
Onondaga County Welfare Attorney,
Attorney for Defendant,
Onondaga County Department of Social Services and its Commissioner,
John L. Lascaris,
600 South State Street,
Syracuse, New York 13202.

JAMES H. HUGHES, *of Counsel.*

Plaintiffs' Motion for Summary Judgment

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

Sirs:

PLEASE TAKE NOTICE that upon the annexed affidavit of Douglas A. Eldridge, Esq., plaintiffs' complaint and plaintiffs' memorandum of law and brief previously submitted and upon all the proceedings had herein, plaintiffs will move this Court on June 7, 1972 at 2:00 o'clock in the afternoon or as soon thereafter as counsel may be heard in the main courtroom, Federal Building, Syracuse, New York, for a summary judgment pursuant to Rule 56 declaring unconstitutional and in violation of the Social Security Act and regulations promulgated thereunder New York Social Services regulation 369.2 (3) (f) (ii) (e) and permanently enjoining the enforcement of said regulation and for a determination pursuant to Rule 23 that this action may be maintained as a class action, and for such other and further relief as the Court may deem just and proper.

Dated: Syracuse, New York, May 25, 1972.

Respectfully submitted,

ONONDAGA NEIGHBORHOOD LEGAL SERVICES,

DOUGLAS A. ELDRIDGE, *of counsel*,
Attorneys for Plaintiffs,
633 South Warren Street,
Syracuse, New York 13202,
Telephone: (315) 475-3127.

Affidavit in Support of Plaintiffs' Motion for Summary Judgment.

To:

Phillip Pinsky, Esq.,
Assistant Welfare Attorney,
Department of Law,
Onondaga County Department
of Social Services,
600 South State Street,
Syracuse, New York 13202.

Sidney Grossman, Esq.,
Assistant Attorney General,
State Office Building,
333 East Washington Street,
Syracuse, New York 13202.

Affidavit in Support of Plaintiffs' Motion for Summary Judgment

State of New York,
County of Onondaga, ss.:
City of Syracuse,

I, DOUGLAS A. ELDRIDGE, being duly sworn, depose and say that:

1. I am an attorney at law admitted to practice in New York State and am a member of the bar of this Court. I am employed by Onondaga Neighborhood Legal Services, Inc., and as such am counsel for the plaintiffs herein.

2. I am fully familiar with all the facts of this case. I make this affidavit in support of plaintiffs' motion for summary judgment.

Affidavit in Support of Plaintiffs' Motion for Summary Judgment.

3. Plaintiffs' class consists of all applicants and recipients of public assistance in the State of New York who have been denied assistance or are threatened with denial for their refusal to file and prosecute petitions of non-support against responsible relatives pursuant to New York Social Services regulation 369.2(3)(e)(ii)(f).

4. Plaintiffs have moved for a summary judgment in the above captioned proceeding pursuant to Rule 56. Plaintiffs contend that as to the following material facts there is no genuine issue to be tried.

a. At the time of her application for public assistance in March, 1972, Sylvia Shirley was required by the Onondaga County Department of Social Services to file a petition of non-support against her husband as a condition of her and her two infant children's eligibility for Aid to Dependent Children.

b. An application made by Mrs. Shirley earlier in the year was denied because Mrs. Shirley refused to prosecute her husband.

c. Mrs. Shirley did not wish to file such a petition because she feared such an act would cause her husband to file for divorce and to attempt to remove the two infant children of the marriage from her custody.

d. Since Mrs. Shirley was destitute and had no way to obtain subsistence for herself and her infant children other than Aid to Dependent Children, she filed a petition of non-support against her husband.

e. Mrs. Shirley has undertaken steps to withdraw her non-support petition in Family Court.

f. Because of her attempted withdrawal, Mrs. Shirley fears that the Onondaga County Department of Social Services will proceed against her pursuant to Social Services regulation 369.2(f)(3)(ii)(e) and terminate her assistance.

g. Mrs. Shirley has been informed by her husband recently that he has begun divorce proceedings against her in the State of Virginia.

h. In January, 1972, Elizabeth Anderson was required by the Onondaga County Department of Social Services to file a petition of non-support against her husband as a condition of her and her infant daughter's eligibility for Aid to Dependent Children.

i. Mrs. Anderson did not wish to file a petition of non-support against her husband because he was in fact supporting his family in the amount of $100.00 per month. Mr. Anderson's ability to provide support is limited by the fact that he is a full time student living on a fellowship.

j. Because Mrs. Anderson had no resources other than her support payments she was forced to comply with Social Services regulation 369.2(f)(3)(ii)(e) by filing said petition in order to obtain Aid to Dependent Children for herself and her infant daughter.

k. Thereafter Mrs. Anderson requested the Family Court to withdraw her petition. On May 24, 1972, Onondaga County Family Court Judge Peter Kolakowski granted Mrs. Anderson's request and dismissed the petition.

Affidavit in Support of Plaintiffs' Motion for Summary Judgment.

l. Because of her withdrawal of the non-support action, Mrs. Anderson fears that the Onondaga County Department of Social Services will terminate her and her daughter's assistance pursuant to Social Services regulation 369.2(f)(3)(ii)(e).

m. On or about February 1, 1972, Jane Doe received a letter from the Onondaga County Department of Social Services informing her that her daughter Kirsten's assistance would not be paid until Mrs. Doe took Kirsten's father to court and a support order was established.

n. Mrs. Doe had instituted non-support proceedings in the Fall of 1971 against Kirsten's father. Because these proceedings had come to naught, Mrs. Doe could see no utility in going through the same vexatious proceedings again.

o. Kirsten's Aid to Dependent Children grant was terminated February 29, 1972.

p. On April 10, 1972 during the hearing on plaintiff's request for a Temporary Restraining Order in this matter, counsel for defendant Lascaris stipulated to the return of Kirsten to the Aid to Dependent Children rolls because the State Department of Social Services had exceeded the time limitation set by their own regulation for issuing a fair hearing decision.

q. Members of the plaintiff class Rachael Sears and Deborah Scirocco were denied public assistance by Onondaga County Department of Social Services on March 24, 1972 because they refused to sue their parents for non-support.

r. Deborah Scirocco subsequently agreed to file a petition of non-support against her parents even though she has been living separate and apart from them for the last four years. After filing said petition she was granted public assistance.

s. Rachael Sears continues to refuse to prosecute her parents and therefore receives no public assistance.

t. On April 11, 1972 Elizabeth Grainger applied for public assistance for herself and her unborn child. She and her unborn child were denied because she indicated that she did not wish to sue her father for non-support.

u. Forty days thereafter at the hearing in Federal Court on plaintiffs' motion for a Temporary Restraining Order on behalf of Miss Grainger, counsel for defendant Lascaris agreed to reinstate Miss Grainger's April application without requiring her to sue her parents. Defendant Lascaris' counsel had investigated the matter in the interval and had determined that Mr. and Mrs. Grainger were not able to support their daughter.

5. The only outstanding issues raised by this law suit are issues of law. To wit:

a. Whether New York State Social Services regulation 369.2(f)(3)(ii)(e) is unconstitutional under the supremacy clause in that it imposes an additional eligibility requirement for public assistance not called for by the Social Security Act.

b. Whether New York State Social Services regulation 369.2(f)(3)(ii)(e) is unconstitutional in that it denies

equal protection of the law by setting up an invidious and discriminatory class not rationally related to the statutory purposes of the Social Security Act or the State Social Service law.

c. Whether the Department of Social Services practice under Social Services regulation 369.2(f)(3)(ii)(e) offends principles of due process and equal protection by establishing a classification of children based upon conditions which the affected individuals have no power to alter.

d. Whether the relief requested requires a class action.

6. Since there are no material issues of fact between the parties and since the only outstanding questions are questions of law, plaintiffs' motion for summary judgment is proper.

DOUGLAS A. ELDRIDGE.

(Jurat omitted in printing.)

Affidavit in Opposition to Plaintiffs' Motion for Summary Judgment

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

State of New York,
County of Onondaga,
City of Syracuse. } ss.:

JOHN LASCARIS, being duly sworn, deposes and says that:

1. I am the defendant Commissioner of Social Services of Onondage County.

2. I make this affidavit in opposition to the plaintiffs' motion for summary judgment.

3. My opposition is essentially on four grounds:

(a) The named plaintiffs have no standing to sue in their own right, and should not be allowed to represent a "class", since none of them are aggrieved or were aggrieved at the commencement of this action by the state regulation of which they complain.

(b) The lack of standing is especially important in this case, inasmuch as the challenged regulation is apt to be superseded by a new state law which appears to eliminate the plaintiffs' primary complaint—that wives should not be required to sign support petitions against their husbands.

(c) The challenged regulation requires construction by the state court; and the federal court ought to abstain until such construction is rendered.

(d) The challenged regulation is valid on its face, since it is not inconsistent with federal law or regulation, and, indeed, is authorized by a federal regulation.

4. Regarding the named plaintiffs' lack of standing to sue:

(a) This defense was pleaded in my answer to the complaint, a copy of which is submitted herewith. See the first affirmative defense, paragraphs 8-12 of the answer.

(b) Plaintiff Sylvia Shirley, with her two children, has been receiving full assistance allowable since she applied for public assistance on March 8, 1972. She filed a support petition against her husband under the Uniform Support for Dependents Law, without any objection or complaint, and on April 27, 1972, a support order was granted by the Virginia Juvenile and Domestic Relations Law in the amount of $70.00 semi-monthly. A true copy of the court order is annexed hereto and made a part hereof. There is no court proceeding pending, so far as I am aware, to vacate this court order. No action has been taken or is contemplated by my department with respect to Sylvia Shirley under the regulation which she seeks to challenge in this suit.

(c) Elizabeth Anderson and her daughter have been receiving full assistance allowable since she applied for public assistance on January 18, 1972. Although the Family Court granted her motion to dismiss her petition on May 24, 1972, no action has been taken or is contemplated by my department with respect to her welfare grant, since I do not believe that my department should

make a collateral attack upon that determination of the Family Court.

(d) Jane Doe and her children have been receiving full assistance for a number of months. Earlier this year, my department was advised that her child, Kirsten Wynn, was receiving support from her father and consequently assistance for Kirsten was suspended pending verification of this information. The information proved incorrect, however, and assistance for Kirsten was reinstated, with back payments made in full pursuant to a fair hearing decision on April 20, 1972, a copy of which is annexed hereto. But in any event, Kirsten's assistance was not and could not be cut off under the challenged regulation which only authorized discontinuance of assistance to the parent, with no penalty against the child. At no time was the mother's grant affected. Consequently, the challenged regulation has never been involved in Jane Doe's case and she is not aggrieved thereby.

(e) All named plaintiffs are eligible for and have received medical assistance and food stamps.

(f) The moving affidavit seeks to rely on an alleged denial of relief to several minors who allegedly refused to file non-support petitions against their parents. One such case referred to in the moving affidavit is Elizabeth Grainger, whose application to intervene in this suit was withdrawn. My counsel noted on the record just prior to Miss Grainger's withdrawal from the suit that in his opinion the challenged regulation did not apply to the case of a minor applying for public assistance who may have support available from a parent. I concur in my counsel's

reservations about the applicablity of the challenged regulation to a case like that of Miss Grainger. But the existence of a parent able to support a minor, or at least not shown to be financially unable to provide support, is a resource which my department may consider available to the minor.

5. (a) The named plaintiffs' lack of standing is particularly relevant in this case, since the challenged regulation is apt to be superseded by a new state law which would take effect September 1, 1972, and which would not subject wives to loss of assistance solely because they refused to sign a support petition against their husbands.

(b) Attached hereto is a true copy of Assembly 12216, a bill which passed both houses of the New York State Legislature at the 1972 Session and which has been signed by Governor Rockefeller, C. 687 of Laws of 1972. He may have acted upon it by the return date of this motion. The bill has two important differences from the challenged regulation:

(1) The refusal to institute a proceeding for support is not a ground for cutting off the mother's assistance. Only willful failure or refusal to furnish evidence necessary to support a petition, or to furnish information relative to the location of the other parent, constitutes grounds to terminate the parent's assistance so long as she fails to assist or cooperate.

(2) The bill specifically provides in § 4 thereof that it shall be ineffective to the extent that it is determined to be not in compliance with federal law or regulations pertaining to public assistance and care. We do not

know how the State Social Services Department or the State courts will construe the bill with respect to federal regulations.

These differences between the terms of the challenged regulation and the terms of the new bill are especially important in light of the plaintiffs' consession on page 37 of their brief that "All the plaintiffs are asking [is] that the County Commissioner of Social Services' name be in the caption [of a support proceeding] instead of their own." Apparently the new law will satisfy the plaintiffs in this regard.

(c) Accordingly, the federal court ought to reject the standing to sue of the named plaintiffs, especially since the anticipated new state law may avoid further litigation.

6. With respect to the policy of the federal courts to stay their hand pending construction of a state law or regulation by state courts, I am advised that a recent case in point is *Russo vs. Kirby*, 453 F.2d 548 at 552 (2d Cir. 1971), citing *Reetz vs. Bozanich*, 397 U. S. 82 (1970).

7. If the court determines to reach the merits of the challenged regulation, then I submit that it is valid on its face, since it is not inconsistent with federal law or regulation and, indeed, is arguably authorized by a federal regulation—a regulation, it may be added, that none of the federal cases cited by plaintiffs appear to have considered or had called to their attention.

Affidavit in Opposition to Plaintiffs' Motion for Summary Judgment.

8. The vice of the regulations challenged in the Oregon, California and Illinois cases cited by plaintiffs is that the children were disqualified from further assistance in each of those cases. The federal courts held that the children could not be penalized under the federal regulations. Although those decisions appear to be inconsistent with the holding of *Wyman vs. James*, 400 U. S. 309 (1971), the point is academic because the challenged New York State regulation does not cut off the child's right to assistance.

The Illinois case, *Doe vs. Swank*, 332 F. Supp. 61, enjoined defendants from denying assistance "to a dependent child", or from conditioning "aid to a dependent child upon the mother's cooperation" (332 F. Supp. at 63). Nothing was decided as to the mother's eligibility.

The Oregon case, *Meyers vs. Juras*, 327 F. Supp. 759, enjoined a regulation denying assistance to the child as well as the mother. The court said at 762: "Neither do we hold that the State of Oregon may not seek the A.F.D.C. mother's cooperation through means less drastic than the withdrawal of benefits *from her children*." (Italics added).

The California case, *Taylor vs. Martin*, 330 F. Supp. 85, also enjoined a regulation denying assistance to the *children* for the mother's refusal to sign a criminal complaint against her spouse.

9. Plaintiffs contend in their brief that HEW regulations do not authorize withdrawing assistance to the mother for her refusal to cooperate in locating or prosecuting her husband. But plaintiffs do not refer to the following HEW regulations relating to "conditions of eligibility"

in furnishing assistance (Part 233 of Title 45). Specifically, regulation 233.20(a)(3)(ii) requires every state plan for ADC to provide that in setting financial eligibility and the amount of assistance payments:

> "(d) current payments of assistance will not be reduced because of prior overpayments unless the recipient has income or resources currently available in the amount by which the agency proposes to reduce payment; except that where there is evidence which clearly establishes that a recipient willfully withheld information about his income or resources, such income or resources may be considered in the determination of need to reduce the amount of the assistance payment in current or future periods; and (e) income and resources will be reasonably evaluated."

Further, in regulation 233.20(a)(3)(ix), the state plan must

> "Provide that the agency will establish and carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state of availability."

10. It is submitted that a husband's support is a potential resource as to which the state has a right, and indeed, a duty to establish a policy designed to develop this potential source of income to a state of availability, and, further, that when a mother willfully withholds information about such source of income, thereby preventing income from being developed and reasonably evaluated, the state has the right and indeed the responsibility

to withhold assistance to the parent. Compare *Snell v. Wyman*, 281 F. Supp. 853, aff'd. 393 U.S. 323 (1969).

11. For all of the foregoing reasons, the plaintiffs' motion for summary judgment should be denied and the complaint should be dismissed.

s/ JOHN LASCARIS.

Order of Substitution

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

This matter having come on by Order to Show Cause before the undersigned judge on the motion of the Plaintiff for leave to drop George K. Wyman as a defendant and replace him with his successor in office, Abe Lavine, it is hereby

ORDERED, ADJUDGED AND DECREED that Plaintiff is authorized to drop George K. Wyman as a defendant in this action and replace him with his successor in office, Abe Lavine.

EDMUND PORT,
United States District Judge.

Dated: Auburn, N. Y., May 24, 1972.

Transcript of Decision of Three Judge Court

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

SYLVIA SHIRLEY, individually and on behalf of her minor dependent children, TAMMY LYNN and LISA MARIE, and on behalf of all others similarly situated;

ELIZABETH ANDERSON, individually and on behalf of her minor dependent child, JOANNE, and on behalf of all others similarly situated;

JANE DOE, individually and on behalf of her minor dependent child, KIRSTEN WYNN, and on behalf of all others similarly situated,

versus

GEORGE K. WYMAN, as Commissioner of the Department of Social Services of the State of New York;

and

JOHN LASCARIS, as Commissioner of the Department of Social Services of the County of Onondaga; individually and in their official capacities.

Civil No. 72-CV-163.

A hearing in the above-entitled matter was held pursuant to notice at the United States District Court held in and for the Northern District of New York, at Syracuse, New York, on Wednesday, June 7, 1972, at two o'clock p. m. before Hon. Walter R. Mansfield, Circuit Court Judge and Hon. James T. Foley and Hon. Edmund Port, United States District Court judges for the Northern District of New York.

Appearances:

Douglas A. Eldridge, Esq., and David Cumming, Esq., Attorneys and Counsellors at Law, Syracuse, New York, appearing in behalf of the Plaintiffs,

and

Hon. Louis J. Lefkowitz, Attorney General of the State of New York, Albany, New York, By: Sidney Grossman,

Esq., Assistant Attorney General, Syracuse, New York, Of Counsel, appearing in behalf of Commissioner George K. Wyman; and

Philip C. Pinsky, Esq., Attorney and Counsellor at Law, South Warren Street, Syracuse, New York, appearing in behalf of the Commissioner John Lascaris.

3:40 p. m.

Judge Mansfield: Gentlemen, after discussing your arguments, which have been very helpful and reviewing some of the points that were discussed I think we are in a position to render a decision on the matter that is before us. I have made—I scribbled a few notes here as have my colleagues and I will attempt to give you our decision now and after I have done so an order can be submitted in due course.

As I see it, we are here confronted with a motion for summary judgment in what purports to be a class action challenging the legality of this one section of the New York State Department of Social Services regulation called 369.2(f)(3)(II)(e), and the challenge as we see the papers is a challenge of the legality of that regulation insofar as it has been interpreted by the Department of Social Services and by the Commissioner to require those applying for aid to families with dependent children to file petitions for non-support against the deserting spouses as a condition to receiving relief, or to prosecute such petitions.

The plaintiffs contend that that regulation violates both the 14th Amendment's equal protection clause and the

aid to family with dependent children section of the Social Security Act of 1935, which is under 42 U.S. Code Section 601, 602 and the following sections, and that it violates the regulations that were promulgated by the Secretary of Health, Education and Welfare thereunder.

We find it unnecessary to go into the constitutional questions that have been presented. We do think that the matter can be disposed of by reference to the appropriate sections of the Social Security Act and the regulations promulgated under it.

In 1950, as I believe you all know, Congress amended the Aid Section of the Social Security Act as the law appears in that Section 602-e to provide that beginning in 1952 the State AFDC plan must provide that prompt notice to appropriate law enforcement officials and the granting of aid to dependent families with children in respect to a child that has been abandoned by parent, that has commonly been referred to as "Notice to Law Enforcement Officials" was in the instigation of the Welfare administration noleo.

Now New York's noleo regulation is a regulation to which we referred and it provides in pertinent part under a heading entitled "Abandonment and Desertion": "That a parent or other relative who fails to cooperate with the Social Services official in the location and prosecution of the deserting or abandoning parent shall be ineligible for public assistance and such failure to cooperate shall in appropriate cases be brought to the attention of the Family Court for whatever action the Court may wish to take under such circumstances."

There is another regulation that I think is pertinent here and that is the one I referred to earlier, 457 of federal regulation 235.70, issued by the Secretary of Health, Education and Welfare, which provides under the title of "Notice to Law Enforcement Officials" that a State plan under the AFDC title must provide that the appropriate law enforcement officials in writing promptly as soon as AFDC has been furnished with respect to a child who has been deserted or abandoned by a parent, and I quote: "This requirement has no effect upon the determination of eligibility. This is a requirement upon the Agency and is fulfilled by providing the following information after the family has been found eligible and has been granted assistance." And then there continues provisions with respect to the information.

Now the plaintiffs are mothers with dependent children living as family units with their children. Each is receiving full assistance including assistance for the child and for themselves under AFDC. Each was advised that unless they cooperate in instituting a suit against the deserting parent that payments would be denied.

As we see the record, the plaintiff Doe refused to reinstitute an action after having once instituted an action which was unsuccessful. Mrs. Shirley has reinstituted an action, claiming that she was required and has instituted it and prosecuted it under protest. Mrs. Anderson has withheld a petition but did at one time institute a petition for non-support against the deserting parent. And what it boils down to is that some of these plaintiffs have filed petitions and contend that they have done so under duress and that they felt that they might be suspended, that remu-

neration of aid or initial refusal to give it to them as mothers of dependent children unless these actions were instituted or prosecuted.

Now the defendants, as we know, are the Commissioner of the Department of Social Services of the State of New York and the Commissioner of the Department of Social Services of the County of Onondaga. After a full review of these facts as interpreted by the parties in their briefs the only justiciable issue that we see presented by these facts is the legality of the requirement that a parent or other relative who fails to institute or prosecute an action, a non-support action against a deserting or abandoning parent be a condition of eligibility for relief.

Jurisdiction I think, is clear and it is undisputed. It is founded on Title 28 United States Code Section 1343.3 and 4, and that is uncontested. A three-judge court was sought in April and Judge Port on April 18th ordered that a three-judge court be convened. We all subscribe to the propriety of that action. All requirements of Title 28, United States Code Section 2281 have been met. This is clearly a case for a three-judge court. A State officer and the Commissioner of Social Services is a party defendant. The city challenges a State regulation of state-wide application. Injunctive relief is sought and it is alleged that the state regulation violates the 14th Amendment.

As I said earlier we do not think it is necessary to go into the question of the 14th Amendment for the reason that it can be disposed of in the Social Security Act. And as I think you are all aware, the Supreme Court has within the last two or three years repeatedly said that where

a case of this character can be disposed of on a non-constitutional ground we should do so.

Now there is a contention here that the plaintiffs sue on behalf of members of a class, and while the record in that respect is not entirely clear, we are satisfied that a sufficient showing has been made pursuant to Rule 23(b)(2) of the federal rules of civil procedure to warrant this being declared a class suit to the extent that the class includes mothers of dependent children who have been required to institute or to prosecute non-support proceedings against abandoning or deserting parents of the child as a condition of receiving welfare relief of assistance under the A.F.D.C. provisions. That would be the extent of any class action in this case as we see it on the record before us.

Now I think we can briefly touch on one objection that has been raised by the papers but not mentioned in argument, and that is the argument that there has been a failure here to exhaust administrative remedies and that the action should therefore be discontinued. We disagree with that contention. We see no need for a requirement that administrative remedies be exhausted in this case.

We are, of course, familiar with the decision of the Second Circuit in Eisen against Eastman, but that case, that decision, insofar as it required exhaustion of administrative remedies as a condition to the institution of a federal suit was careful to point out that the exhaustion would not be required where it would be a futile act. We think this case falls squarely within that exception.

The Commissioner of Social Service and the hearing examiners in an administrative proceeding here would be powerless to declare unlawful a regulation of the Social

Service law in the State of New York. Therefore I can't see—or we can't see what purpose would be served by a State administrative remedy in this case. Accordingly we find it unnecessary for the plaintiffs to have exhausted their administrative remedies.

Now the argument that has been made at considerable length here is that the plaintiffs lack standing. And the contention of the State and the County is that each of the named plaintiffs is already receiving legal aid—I mean not legal aid but welfare assistance under the A.F.D.C. provisions in the full amount to which she is concededly entitled and therefore they have no standing to challenge the validity of the State's noleo regulation to the extent we have indicated it is being challenged.

The plaintiffs of course contend that they have complied with it, or the interpretation of it, in instituting and prosecuting non-support suits under protest and that they did it because they were afraid that unless they did it support might be withdrawn.

As we see it this is clearly a case where the people who are seeking relief do have a sufficient personal stake in the outcome to assure that the Court is being called upon and will resolve real issues between genuine adversaries rather than merely to give an advisory opinion with respect to something that is theoretical.

These papers, and I am referring now to the affidavits of the plaintiffs and the exhibits that are attached to the moving papers, point out a sufficient number of facts and details that are undisputed to convince us that these plaintiffs are academic personages that have come in because they have an interest in getting an interpretation of welfare laws in which they have no immediate interest.

We are satisfied by the indication that while they are obeying the regulation as it has been interpreted they do have genuine fear that the enforcement will harm them and they have a desire to avoid the necessity of having to prosecute or continue prosecuting non-support actions as a condition of the institution of receiving relief.

Now we turn then to the merits, and as we see it, the merits of this case, to the extent that it presents a judicial issue have been fairly classed by the decisions of the Supreme Court of the United States affirming the three-judge court decisions in Taylor against Martin, 330 F. Supp. 85, which was affirmed *per curiam* at 404 U. S. 980; and in Meyers against Juras, 327 Fed. Supp. 759, and was affirmed *per curiam* by the United States at 404 U. S. 803.

In those cases the Courts, and in other cases which I have not mentioned, and lastly Doe against Swank, at 332 Fed. Supp. 61, which was affirmed by the name of Weaver against Doe, 404 U.S. 987. Now those decisions as well as other district court decisions all declared unconstitutional similar statutes or regulations by States which refused A.F.D.C. benefits to the child of a parent who refused to cooperate with authorities by starting court proceedings against the parent for non-support.

New York's noleo regulation of course applies to cases where a parent or other relative fails to cooperate in prosecuting the deserting spouse and imposes, as it has been interpreted, imposes such prosecution as a condition. Now the State seeks to distinguish the New York noleo provision as it has been interpreted on the ground that here the State would be paying the relief to the parent rather than to the child.

We see no substance to that distinction. We believe that the provision to the extent that it requires the parent to bring suit and denies relief to the parent for failure to bring suit is equally appealable under the provisions of the Social Security Act and regulations I have mentioned. In short, as we see it, the effect is to do or to set up an additional eligibility requirement before A.F.D.C. aid can be received, which is contrary to what Congress provided and what the Secretary of Health, Education and Welfare has provided.

We also feel that the distinction based upon the fact that here the aid would be denied to a mother instead of directly to the child is an illusory one. The program being administered here, by its very title is "Aid to families with dependent children". And Section 401 of the Social Security Act, that is 42 U.S.C. 601, refers repeatedly to the motivation which is to furnish financial assistance to dependent children and the parents or relatives with whom they are living. Particularly as a practical matter, and I think counsel all did concede this, that the denial of the relief to the mother, or her share of the relief, would visit just as much harm and hardship upon the child because it would be unrealistic not to appreciate that the mother would then be forced to turn to the portion allocated to the child in order to support the family unit.

This very question, as Judge Foley pointed out earlier, was before the District Court in Connecticut, in Doe against Harder, 310 Fed. Supp. 302, where the appeal was dismissed for lack of jurisdiction in 399 U.S. 302; and another case, Doe against Shapiro, 302 Fed. Supp. 761, appeal dismissed 396 U.S. 397.

That was the case where Judge Smith initially made the suggestion attributable to him by Judge Foley here, and later a three-judge court held the Commissioner of Connecticut State Welfare Department in contempt for refusing or creating an additional eligibility requirement that would in effect deny a mother for failure to disclose the identify of the illegitimate child's father.

Now under all of the circumstances we feel that the plaintiffs here having satisfied to the extent indicated the class action statute are entitled to some relief. And we are prepared accordingly to grant the plaintiffs' motion, and grant it to the extent of declaring, pursuant to the declaratory judgment sections of Title 28, and I refer to Sections 2201 and 2202, and of course the rule 57 of the federal rules of civil procedure, that New York's noleo regulation that the purpose—with the numerous laws I read earlier, violates the Social Security Act of 1935; the 42 U.S. Section 602 of the regulations issued thereunder, and I refer specifically to the one I mentioned earlier,—45 Code of federal regulations, Section 235.70, to the extent that it requires or is interpreted by the defendants to require the parent or a relative of dependent children to file or to prosecute a non-support action against abandoning or deserting parents of such child as a condition to receiving additional aid or continued aid under the A.F.D.C. provisions of the Social Security Act.

We also grant summary judgment to the plaintiff to the extent of holding that the plaintiff would be entitled to an injunction restraining the defendants from terminating or denying public assistance to the plaintiffs or to members of the class as I have previously defined it, or because of a failure or refusal of the plaintiffs or members of the class

as so defined to initiate or to continue prosecution of non-support suits against parents who have abandoned or deserted the child in question.

To this extent summary judgment appears to be warranted in favor of the plaintiffs, otherwise it is denied. And of course the defendants' cross motion for summary judgment, which I believe was made orally, if not being made in writing, is denied.

Now we have delivered this informal opinion on the record because of the importance of the issues. However since it is informal, I would like to ask my colleagues on this Court whether they wish to change or modify it or interpret anything that I have said on our behalf. Judge Foley?

Judge Foley: No. I think it was splendidly done. Of course it shows research on the part of Judge Mansfield. I do think in reference to the two citations you gave in Connecticut by the three-judge court there might have been a transposition of the numbers. The first was Doe against Shapiro, 302 Fed. Supp. 761. After that Judge Smith decided again in Doe against Harder, 310 Fed. Supp. 302. And that is the only changes that I think are necessary.

Judge Mansfield: You are quite correct. Judge Port?

Judge Port: I would conclude by saying that I concur except that I would like to correct in the record what I think was a slip of the tongue. In referring to the District Court cases on which the court ruled, if I am not mistaken Judge Mansfield said that they were declared unconstitutional. I think that the intention was to state that they were violative of the Act and the regulations.

That concludes my comments, but I would like to briefly confer with the other judges about a couple of other matters.

Judge Mansfield: First let me concur in what Judge Port has said, that those decisions to which I refer, including the ones that were entered *per curiam* by the Supreme Court relate to violations of the Social Security Act were not decided on constitutional grounds.

(Discussion held between the three justices outside the hearing of the Court Reporter.)

Judge Mansfield: Gentlemen, we would request counsel to submit an order to the judges in accordance with what we have found here this afternoon in deciding. I think that ought to be done on notice and stipulation, if possible.

Now Judge Port has directed that the named defendants would issue a directive to the defendant Lavine to issue a directive to all the Social Service offices in New York in conformity with the decision and the order, and in that connection of course your attention is referred to the provisions that are contained in the Health, Education and Welfare's handbook which is quoted from rather liberally on Page 14 of the Plaintiffs' brief.

One other feature that perhaps ought to be defined, and that is that the class as described by me was the mothers of dependent children who have been required to institute non-support proceedings as against the abandoning spouse. That should be modified to the care of a relative who is required to take such action as a condition. Aside from that I don't think there is anything further we wish to add.

That will terminate the proceedings.

Mr. Eldridge: I am not sure how this leaves other members of the plaintiff class who are not named plaintiffs here. Are they to be re-instated retroactive to the time even on failure to file a petition?

Judge Mansfield: Well the case is limited to those who have been required to institute non-support proceedings. Now your question is whether or not they get the benefit of this.

Mr. Eldridge: Well assuming the mother has refused to institute proceedings and has been denied or terminated, would she be entitled under this order to retroactive reinstatement?

Judge Mansfield: I think if she falls within the class and if she establishes that she was required to institute a non-support proceeding or to prosecute a non-support proceeding against the abandoning parent of the child as a condition to receiving aid, then you would interpret the judgment and she would fall within the class.

Mr. Eldridge: Thank you, Your Honor.

Judge Mansfield: A class action does not necessarily mean that a plaintiff—I am sure you are aware of this—who may be a member of the class automatically walks up to the window and says "here is my judgment, now pay me some money." The plaintiff may very well have to prove more facts before she qualifies.

I think we ought to make one thing clear. We are not including in this class, as you have presented the class, people who have been unable to obtain relief in the past. As we see it, this is a class of all people who have received relief. You don't represent anybody who is not presently receiving relief.

If someone is terminated, that is a different situation.

Thank you, gentlemen.

(Whereupon this proceeding was terminated.)

Reporter's Certification

I, F. ROBERT JORDAN, Official Court Reporter for the United States District Court held in and for the Northern District of New York, do certify the foregoing to be a true and accurate transcription of the stenographic notes as taken by me during the aforesaid proceedings

F. ROBERT JORDAN,
Official Court Reporter,
Northern District of N. Y.

Albany, N. Y.
June 22, 1972.

Order of Three Judge Court

Copy
U. S. District Court
N. D. of N. Y.
Filed
Jul 21 1972
At .... o'clock .... M.
J. R. Scully, Clerk
Utica

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

SYLVIA SHIRLEY, individually and on behalf of her minor dependent children, TAMMY LYNN and LISA MARIE, and on behalf of all others similarly situated;

ELIZABETH ANDERSON, individually and on behalf of her minor dependent child, JOANNE, and on behalf of all others similarly situated;

JANE DOE, individually and on behalf of her minor dependent child, KIRSTEN WYNN, and on behalf of all others similarly situated,

Plaintiffs.

vs.

ABE LAVINE, as Commissioner of the Department of Social Services of the State of New York,

JOHN LASCARIS, as Commissioner of the Department of Social Services of the County of Onondaga; individually and in their official capacities,

Defendants.

Index No. 72-CV-163.

ORDER

This action having come to trial before the Court of three judges on Plaintiffs' motions for a class order, preliminary and permanent injunction, declaratory judgment and summary judgment; and based on the pleadings, affidavits, exhibits and memoranda, and also the representations and arguments of counsel in open court, it is

ORDERED, that the action is found to be a class action, the class consisting of mothers and relatives of dependent children who have been required to institute or prosecute actions for non-support against deserting or abandoning parents of the dependent child or children receiving AFDC, and

ORDERED, that summary judgment be granted plaintiffs:

a. Declaring that New York Social Services Regulation 369.2(f)(3)(ii)(e) violates the Social Security Act and regulations promulgated thereunder to the extent that it requires parents or relatives of needy and dependent children to institute and prosecute non-support actions against abandoning or deserting parents or spouses as a condition of eligibility for AFDC, and

b. Ordering that a permanent injunction issue restraining defendants from terminating or denying AFDC to members of the plaintiff class because of their failure or refusal to institute or prosecute actions for non-support, and

ORDERED, that defendant Lavine immediately issue an order to each County Commissioner of Social Services in the state informing said Commissioners of the invalidity of 369.2(f)(3)(ii)(e) to the extent stated above, and that they must immediately desist from terminating or denying AFDC to members of plaintiffs' class for their refusal to institute or prosecute actions for non-support, and

ORDERED, that this order is not retroactive but shall take effect June 7, 1972.

Dated this 14th day of July, 1972.

WALTER R. MANSFIELD,
United States Circuit Judge.

JAMES T. FOLEY,
United States District Judge.

EDMUND PORT,
United States District Judge.

Notice of Appeal of State Appellant

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

Notice is hereby given that defendant Abe Lavine, individually and as Commissioner of the Department of Social Services of the State of New York, hereby appeals to the Supreme Court of the United States from the final order entered in this action on July 21, 1972 granting plaintiffs summary judgment declaring that New York Social Services Regulation 369.2(f)(3)(ii)(e) violates the Social Security Act and regulations promulgated thereunder to the extent that it requires parents or relatives of needy and dependent children to institute and prosecute non-support actions against abandoning or deserting parents or spouses as a condition of eligibility for AFDC and granting injunc-

tive relief implementing that determination, and defendant Lavine appeals from each and every part of that order.

This appeal is taken pursuant to 28 USC § 1253.

Dated: Albany, New York, August 7, 1972.

LOUIS J. LEFKOWITZ,
Attorney General of the State
of New York,

By JEAN M. COON,
Assistant Solicitor General,
Attorney for Defendant Lavine,
Department of Law,
The Capitol,
Albany, New York 12224,
Telephone: (518) 474-7138.

To:

Honorable J. R. Scully, Clerk,
United States District Court for the
Northern District of New York,
Federal Building,
Utica, New York 13503.

Douglas A. Eldridge, Esq.,
Onondaga Neighborhood Legal Services, Inc.,
633 Warren Street,
Syracuse, New York 13202,
Attorney for Plaintiffs.

Leonard C. Koldin, Esq.,
Onondaga County Welfare Attorney,
600 South State Street,
Syracuse, New York 13202,
Attorney for Defendant Lascaris.

Notice of Appeal of County Appellant

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

Notice is hereby given that defendant John Lascaris, Individually and as Commissioner of the Department of Social Services of the County of Onondaga, hereby appeals to the Supreme Court of the United States from the final order entered in this action on July 21, 1972, granting plaintiffs summary judgment declaring that New York Social Services Regulation 369.2(f)(3)(ii)(e) violates the Social Security Act and regulations promulgated thereunder to the extent that it requires parents or relatives of needy and dependent children to institute and prosecute non-support actions against abandoning or deserting parents or spouses as a condition of eligibility for AFDC and granting injunctive relief implementing that determination, and defendant, John Lascaris, appeals from each and every part of that order.

This appeal is taken pursuant to 28USC § 1253.

Dated: Syracuse, New York, August 10, 1972.

PHILIP C. PINSKY,
Chief Welfare Attorney,
Attorney for Defendant John Lascaris,
Onondaga County Department of
Social Services,
600 South State Street,
Syracuse, New York 13202,
(315) 477-7125.

Notice of Appeal of County Appellant.

To:

Hon. J. R. Scully, Clerk,
U.S. District Court for the
Northern District of N.Y.,
Federal Building,
Utica, New York 13503.

Douglas A. Eldridge, Esq.,
Attorney for Plaintiffs,
Onondaga Neighborhood Legal Services, Inc.,
633 Warren Street,
Syracuse, New York 13202.

Louis J. Lefkowitz, Attorney General,
By: Jean M. Coon, Assistant Solicitor General,
Attorney for Defendant Abe Lavine,
Department of Law,
The Capitol,
Albany, New York 12224.

Letter Dated December 11, 1972

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

Department of Law
Received
Dec 13 1972
Albany, N. Y.

Solicitor General
Docket Clerk
Mr. Rubenstein

December 11, 1972

Mrs. Ruth Kessler Toch
Solicitor General of New York
Dept. of Law—The Capitol
Albany, N.Y. 12224

Re: Lavine, etc. v. Shirley, etc., *et al.*,
No. 72-582

Dear Mrs. Toch:

The Court today entered the following order in the above-entitled case:

The judgment is vacated and the case remanded to the United States District Court for the Northern District of New York for further consideration in light of Chapter 687 of the 1972 Laws of New York (New York Social Services Law § 101-a as amended). *Diffenderfer v. Central Baptist Church*, 404 U.S. 412 (1971).

Very truly yours,

MICHAEL RODAK, JR.,
Clerk

By HELEN TAYLOR
Helen Taylor, (Mrs.)
Assistant Clerk

Letter Dated December 11, 1972.

Copies to:

Douglas A. Eldridge, Esq.
Onondaga Neighborhood
Legal Services, Inc.
633 South Warren St.
Syracuse, N.Y. 13202

Philip C. Pinsky, Esq.
Onondaga County Welfare
Attorney
600 South State St.
Syracuse, N.Y. 13202

Hon. Richard C. Turner
Attorney General of Iowa
State Capitol
Des Moines, Iowa 50319

Entered in Docket
Dec 13 1972

AIRMAIL

Order to Show Cause Dated March 14, 1973

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title omitted in Printing.)

Upon the Order of the United States Supreme Court remanding the above captioned action for reconsideration and upon the verified complaint and affidavits of Anna Stuck, Richard Hunt and James Bringley, it is

ORDERED that the Defendants Abe Lavine and John Lascaris show cause in the Court Room of the United States Post Office, Clinton Square, Syracuse, New York, on the 9th day of April 1973 at 10:00 A.M. or as soon thereafter as Counsel can be heard, why an order should not issue or the Court take such other action as shall grant the Plaintiffs herein the following relief:

1. Reconvening of the three-judge court pursuant to the remand order of the United States Supreme Court to reconsider the decision of the three-judge court in light of New York Social Services Law 101-a(2) (3).

2. Granting the motion to amend the complaint so as to include New York Social Services Law 101-a(2) (3), as required by the Supreme Court.

3. Granting the motion to intervene Anna Stuck as a Plaintiff aggrieved by the operation of New York Social Services Law 101-a(2) (3), pursuant to Rule 24-b(2) of the Federal Rules of Civil Procedure because there are questions of law and fact in her case similar to those in the main action.

IT IS ORDERED that service of this order on Defendants on or before 5:00 P.M. on the 21st day of March, 1973, be deemed sufficient.

Done and ordered at New York, New York, on this 14th day of March, 1973, at 12:20 o'clock in the afternoon.

s/ WALTER R. MANSFIELD,
United States Circuit Judge.

Affidavit in Support of Order to Show Cause

State of New York,
County of Onondaga,
City of Syracuse. } ss.:

MISS ANNA STUCK, being duly sworn, deposes and says that:

1. She is 35 years of age and resides at 400 Wyoming Street, Syracuse, New York, with her four minor children ages 12, 9, 8, and 2½.

2. She has been a recipient of ADC benefits since 1970.

3. In response to the Onondaga County Department of Social Services' request that Miss Stuck appear for her biannual recertification for public assistance, Miss Stuck went to the Onondaga County Department of Social Services on or about February 2, 1973.

4. She spoke with Ms. Peters, welfare examiner. Ms. Peters inquired why Miss Stuck had not filed a paternity

action for her youngest child, Susan. Miss Stuck told Ms. Peters that she did not want to file such a paternity action because Susan's natural father is disabled and presently unable to support her. Additionally she did not wish to file such an action because she had previously filed a paternity action against the father of her three other children, and that filing resulted in continual dissension between her and the father of her first three children.

5. She does not wish to participate in a paternity action against the father of her youngest child because she fears that such participation will jeopardize her relationship with Susan's father.

6. Miss Stuck did tell Ms. Peters who the father of her youngest child is and his present location.

7. Notwithstanding the above, on or about February 6, 1973, she received a notice of intent to reduce her public assistance from $357.00 a month to $285.60 a month. The reason given by the Department for such a reduction was "failure to comply".

8. On further discussion with her caseworker, Miss Stuck learned that the reason she had been removed from the public assistance grant was her refusal to file a paternity action against the father of Susan.

ANNA STUCK.

(Trial omitted in printing.)

Affidavit in Support of Order to Show Cause

State of New York, }
County of Onondaga, } ss.:

RICHARD V. HUNT, being duly sworn, deposes and says that:

1. He is an attorney associated with Onondaga Neighborhood Legal Services, Inc.

2. On February 6, 1972, Anna Stuck came into his office carrying a written notice of a reduction of her grant.

3. The notice indicated that it was "for the mother's (Anna Stuck's) failure to comply", but Anna Stuck was not sure as to how she failed to comply.

4. To ascertain the reasons for the reduction, Richard Hunt attempted to call the zone supervisor listed on the notice of reduction, but he was unable to contact him.

5. He then asked for A. Peters, the caseworker, who was there.

6. The caseworker stated that Anna Stuck was cut-off from the grant because she has failed to either institute a paternity suit on behalf of one of her children or to ask the Department of Social Services to institute the suit. She went on to say that Anna Stuck had mentioned the names of two men and that there was no reason each one could not pay half. A. Peters stated finally that she had discussed the case with her supervisor, T. Lynch, and that he concurred with her decision.

RICHARD V. HUNT.

Sworn to before me this
7th day of February, 1973.
Susanne M. Meip,
Commissioner of Deeds, Syracuse, N.Y.
Commission Expires 12/31/74.

Affidavit in Support of Order to Show Cause

State of New York,
County of Onondaga, } ss.:
City of Syracuse.

JAMES BRINGLEY, being duly sworn, deposes and says:

1. That he is 25 years of age and resides at 804 Hawley Avenue, Syracuse, New York.

2. That he is employed at Onondaga Neighborhood Legal Services, Inc., in the capacity of a law assistant.

3. That on February 28, 1973, he contacted Mrs. Mary Miller, an intake supervisor for Onondaga County Department of Social Services.

4. That he asked her what the Department of Social Services' procedure was when they encountered an applicant for public assistance who appeared to have a responsible relative who was not providing her with support.

5. Mrs. Miller responded, "We ask if the recipient will file a non-support petition against the relative, and further state that this is not a condition for eligibility. If the applicant is not willing to file a non-support petition, we request the applicant to give us permission to file a petition of non-support. The response to this question affects the applicant's eligibility. The Intake Unit has been instructed by the Legal Division of the Onondaga County Department of Social Services to deny public assistance to those applicants who refuse to give permission to the department to file a non-support petition."

JAMES BRINGLEY.

Subscribed and sworn to before me this
28th day of February, 1973.
Douglas A. Eldridge,
Notary Public in and for the State of New York.
Onondaga County, No. -G168918.
My Commission Expires March 30, 1974.

Order Granting Leave to Amend Complaint and Permitting Intervention

Copy

U. S. District Court
N. D. of N. Y.
Filed
Apr 18 1973
At ..... o'clock ..M.
J. R. Scully, Clerk
Utica

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title omitted in Printing.)

This matter having come on by Order to Show Cause before the undersigned three judges on the remand order of the United States Supreme Court and on the motion of the Plaintiffs for leave to amend their complaint to comply with the Supreme Court's remand order and to intervene Anna Stuck as a Plaintiff, it is hereby

Order Granting Leave to Amend Complaint and Permitting Intervention.

ORDERED, that the Plaintiffs are authorized to amend their complaint so as to comply with the remand order of the Supreme Court by bringing the question of the validity of New York Social Services Law 101-a(2) (3) before this Court, and

ORDERED, that Anna Stuck may intervene as a Plaintiff in the action.

Dated this 9th day of April, 1973.

WALTER R. MANSFIELD,
United States Circuit Judge.

JAMES T. FOLEY,
United States District Judge.

EDMUND PORT,
United States District Judge.

Amended Complaint

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

SYLVIA SHIRLEY, individually and on behalf of her minor dependent children, TAMMY LYNN and LISA MARIE, and on behalf of all others similarly situated;

ELIZABETH ANDERSON, individually and on behalf of her minor dependent child, JOANNE, and on behalf of all others similarly situated;

and

JANE DOE, individually and on behalf of her minor dependent child, KIRSTEN WYNN, and on behalf of all others similarly situated,

Plaintiffs,

vs.

ABE LAVINE, as Commissioner of the Department of Social Services of the State of New York,

and

JOHN LASCARIS, as Commissioner of the Department of Social Services of the County of Onondaga; individually and in their official capacities,

Defendants.

Index No. 72-CV-163.

I

PRELIMINARY STATEMENT

This is a class action brought by plaintiff mothers of needy and dependent children on behalf of themselves, their minor children and all others similarly situated. Plaintiff mothers have been required by the Department of Social Services to file themselves, or to cooperate with the Department's filing of, petitions of non-support or paternity in Family Court against the fathers of their children as a condition of eligibility for public assistance in the Aid to Dependent Children category. Such petitions having been filed, plaintiff mothers are required to cooperate in pro-

ceedings in Family Court under the threat of loss of Aid to Dependent Children benefits.

The requirement of cooperating in the filing and prosecuting of petitions of non-support as a condition of eligibility for Aid to Dependent Children has been held illegal as in conflict with the Social Security Act by the United States Supreme Court. Such a requirement violates Federal Regulations promulgated under the Social Security Act. Further, such a requirement violates the rights of plaintiffs and their minor children and all others similarly situated, which are secured by the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

Termination of intervening Plaintiff Anna Stuck and the threat of termination of the other named members of the plaintiff class should they refuse to cooperate in naming, locating and prosecuting putative or non-supporting fathers causes the members of the plaintiff class to suffer grave harm to their health, safety and spirits. The harm is immediate and if the relief prayed for herein is not granted, will become irreparable.

II

NATURE OF ACTION

This is a class action brought by plaintiffs on behalf of themselves and as next friend of their children and on behalf of all others similarly situated for a Declaratory Judgment pursuant to Title 28 U.S.C. §§ 2201, 2202, to declare that New York State Social Services Law 101-a(2) and (3) (L.1972 C.687), on their face and as interpreted

and applied by the defendants have denied plaintiffs and others similarly situated public assistance in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution, the Social Security Act (42 US.C. 601 *et seq.*) the regulations promulgated thereunder and Title 42 U.S.C. Sections 1983 and 1988 insofar as Scial Services Law 101-a(2)(3) on its face and as applid provides that a mother must file and prosecute a petition of non-support or paternity against the father of her children and must cooperate in naming and locating and furnishing evidence against the respondent as a condition o' her eligibility for public assistance.

III

JURISDICTION

Original jurisdiction is conferred upon this Court by 42 U.S.C Section 1343(3)(4) which authorizes federal courts to enorce rights, privileges and immunities derived from 42 US.C. Section 1983, the Fourteenth Amendment, 28 U.S.C Section 1331 relating to actions arising under any federl statute, and 28 U.S.C. Section 2201 relating to Declaratory Judgments.

This action also seeks a Temporary Restraining Order and apreliminary and permanent injunction to enjoin the defenlants from denyi .g public assistance to plaintiffs and all otner similarly situated for their refusal to name the fathe of their children or to disclose his whereabouts or to cooperate in paternity or non-support proceedings on the ground that New York State Social Services Law 101-a(2)(3) violates the Fourteenth Amendment of the United States Constitution, and Title 42 of the U.S.C. Section 601-609, 1983 and 1988.

IV

THREE JUDGE COURT

Plaintiffs respectfully request that a three-judge district court be convened. Such a court is required under 28 U.S.C. Section 2281 because plaintiffs seek to enjoin the enforcement of New York State statute of state-wide application on the ground that the statute contravenes the Fourteenth Amendment to the United States Constitution.

V

PLAINTIFFS

Plaintiffs are citizens of the United States and of the State of New York.

Intervening Plaintiff Anna Stuck lives with her four minor children ages 12, 9, 8, and 2½, at 400 Wyoming Street, Syracuse, New York. The family's sole means of support is their public assistance grant plus court ordered support payments in the amount of $15.00 per week.

Plaintiffs are members of a class composed of New York resident families, otherwise eligible for benefits under the Aid to Dependent Children program administered by Defendants, who have been required to cooperate in naming, locating and prosecuting putative or non-supporting fathers as a condition of the mother receiving Aid to Dependent Children benefits pursuant to New York Social Services Law 101-a(2) (3).

VI

CLASS ACTION

This is a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure in that persons in the class are so numerous that joinder of all members is impractical. There are questions of law or fact common to the class; the claims of the representative parties are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class. The class consists of Aid to Dependent Children recipients who have been required to cooperate in naming, locating and prosecuting putative or non-supporting fathers as a condition of the mother receiving Aid to Dependent Children benefits pursuant to New York Social Services Law 101-a(2) (3).

VII

DEFENDANTS

Defendant Abe Lavine is Commissioner of the Department of Social Services in the State of New York, and Defendant John Lascaris is the Commissioner of the Department of Social Services of the County of Onondaga, in which capacities they are charged with administering the welfare laws and policy of said state, including New York Social Services Law 101-a(2) (3).

VIII

STATEMENT OF CLAIM

Intervening Plaintiff Anna Stuck has been receiving public assistance for herself and her four infant children since 1970. She was required by the Onondaga County Department of Social Services to appear at their offices for the biannual recertification of her eligibility for public assistance. She did so on February 2, 1973. She was told that she must bring a paternity action against the father of her youngest child herself, or authorize the Department to do so, and that she must cooperate fully with the Department in such an action. She refused to cooperate in the bringing of such an action; her refusal was based on the fact that the father of her youngest child is disabled and is not able to support the child. Furthermore, she had been required by the Department of Social Services to file a paternity suit against the father of her first three children. That filing had lead to constant strife between her and the respondent. She does not wish to duplicate that situation with the father of her youngest child.

IX

FIRST CAUSE OF ACTION

The Court in its initial decision in this case found New York State Social Services Regulation 369.2(f) (3) (ii) (e) invalid for presenting a condition of eligibility not provided by the Social Security Act. The new statute (New York Social Services Law 101-a(2) (3)) suffers from the same vice. By requiring a mother to cooperate in naming, locating and prosecuting a putative or non-supporting father,

New York has again set up a condition of eligibility not provided for by the Social Security Act. As indicated by the decisions of the United States Supreme Court in *Townsend v. Swank*, 404 U.S. 282, 92 S.Ct. 502 (1971); *Meyers v. Juras*, 404 U.S. 803 (1971) reh. den. 404 U.S. 961; *Carleson v. Taylor*, 404 U.S. 803 (1971); *Weaver v. Doe*, 404 U.S. 987 (1971); Department of Health, Education and Welfare regulations (45 C.F.R. 235.70) and proposed rule (Information Memorandum AO-IM-73-14 Dec. 19, 1972) as well as the decisions of numerous federal courts in addition to this Court, a NOLEO requirement which is a condition of eligibility conflicts with the Social Security Act and cannot stand.

> a) The appropriate law enforcement officials will be notified in writing promptly as soon as Aid to Dependent Children has been furnished in respect to a child who is believed to have been deserted or abandoned by a parent. *This requirement has no effect upon the determination of eligibility.* It is a requirement upon the agency, and is fulfilled by providing the . . . information after a family has been found eligible and been granted assistance . . . (emphasis supplied) 45 C.F.R. Section 235.70

New York's NOLEO statute (Social Services Law 101-a (2) (3)) is being used by the Onondaga County Department of Social Services to require an applicant or recipient for Aid to Dependent Children to file a petition of paternity or non-support against the father as a condition of eligibility for a mother's receipt of Aid to Dependent Children. The United States Supreme Court in affirming the decisions of three-judge courts in Oregon and California has determined similar NOLEO provisions to be invalid as setting

up an additional requirement of eligibility not called for by the Social Security Act. *Meyers v. Juras, supra, Carleson v. Taylor, supra, Weaver v. Doe, supra.* Three affirmances make it clear that an applicant for public assistance may not be required to file a petition of non-support. Further, under these decisions an applicant cannot be compelled to cooperate in providing information about the absent parent as a condition of eligibility.

On its face and as applied by the Onondaga County Department of Social Services, the New York NOLEO provision is invalid as establishing an additional eligibility requirement not provided for by the Social Security Act.

PLAINTIFFS' SECOND CAUSE OF ACTION

Defendants' action in erecting an additional requirement of eligibility constitutes a denial of equal protection guaranteed by the Fourteenth Amendment to the Constitution of the United States, in that it creates an invidious and unjustifiable distinction. New York's action in this case requires that impoverished mothers institute and cooperate in proceedings against their children's fathers; no such requirement is imposed on the well-to-do. Marriages of the well-to-do are not driven asunder by forcing one spouse to prosecute another. Classifications based on wealth have long been recognized as peculiarly obnoxious to the principles of equality enshrined in the Fourteenth Amendment.

In this action under 42 U.S.C. Section 1983, no exhaustion of state remedies is required; no adequate remedy at law is available to plaintiffs. Administrative Fair Hearings held by the State Department of Social Services provide no remedy because State Fair Hearing officers are not empowered to declare state statutes illegal.

X

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray on behalf of themselves and all others similarly situated that this Court:

1. Assume jurisdiction of this cause and convene a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284 and the remand order of the Supreme Court.

2. Issue a Temporary Restraining Order and preliminary injunction pursuant to 28 U.S.C. § 2284, ordering the defendants to reinstate the plaintiff Anna Stuck and all other similarly situated members of the plaintiff's class to assistance to which they are entitled, meeting the requirements for a reasonable subsistence compatible with decency and health, and require continued assistance to plaintiff's class should any member withdraw a petition of paternity or non-support which she had previously filed.

3. Enter a final judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Procedure declaring that the New York practices herein described in requiring plaintiffs to cooperate in naming, locating and prosecuting putative or non-supporting fathers of their children conflict with the Social Security Act of 1935, 42 U.S.C. § 602, and the regulations promulgated thereunder by the Department of Health, Education and Welfare, and deny the plaintiffs and the class they represent due process and the equal protection of the laws guaranteed them by the Fourteenth Amendment to the United States Constitution.

4. Issue a permanent injunction restraining the defendants, their successors, agents and employees from terminating or denying public assistance to plaintiffs and the class they represent where such terminations or denials conflict with the Social Security Act of 1935, or deny equal protection of the laws in the manner described above.

5. Award the plaintiffs and the class they represent damages consisting of the public assistance to which they are entitled, but for the illegal and unconstitutional termination of benefits.

6. Award the plaintiffs their costs and disbursements incurred herein.

7. Award the plaintiffs reasonable attorney's fees.

8. Award the plaintiffs and all others similarly situated such further and alternative relief as may seem just and equitable.

Dated: March 5, 1973.

ONLS,
DOUGLAS A. ELDRIDGE,
ONONDAGA NEIGHBORHOOD LEGAL SERVICES,

By: DOUGLAS A. ELDRIDGE, *of Counsel*,
Attorneys for the Plaintiffs,
633 South Warren Street,
Syracuse, New York 13202,
Telephone: (315) 475-3127.

(Verification omitted in printing.)

Plaintiffs' Exhibit 1, Filed May 2, 1973

STATE OF NEW YORK

DEPARTMENT OF SOCIAL WELFARE

In the Matter of the Appeal
of
ANNA STUCK

From a Determination by the Onondaga County Department of Social Services relating to the adequacy of a grant of aid to dependent children.

Date of Hearing: 3/1/73.

Place of Hearing:

Before: William R. Meyers, *Hearing Officer.*

Reported By: Charles F. DeZolt, *Hearing Reporter.*

Appearances:

Appellant:

Anna Stuck.
Douglas Eldridge, Esq.

Onondaga County Department of Social Services:

James Hughes, Esq.—Agency Attorney.
Mrs. Ruth Isaacs—Senior Caseworker Fair Hearings.

Plaintiffs' Exhibit 1, Filed May 2, 1973.

The Hearing Officer: My name is William R. Meyers, I am the hearing officer designated by the State Commissioner of Social Services to conduct this fair hearing on behalf of one Anna Stuck; from an adverse determination by the agency, with specific reference to the adequacy of a grant of aid to dependent children; as respect the computation of the appellant's budget and the removal of her needs therefrom.

There will be a verbatim transcript kept of the record of this proceeding. The hearing will be conducted in the following manner: Both parties will be permitted present documentary evidence, and witnesses, who may be questioned and cross examined. And, if I deem it appropriate, there may be rebuttal. As a result of this hearing there will be a decision issued by the State Commissioner which will be binding on both parties and copies of which decision will be given both parties.

This involves a specific determination of the agency; therefore, I would ask that Mr. Hughes present the agency's case first.

Mr. Hughes: Thank you, Mr. Meyers. At this time, Mr. Meyers I would like to present a recertification form in the matter of the appellant, Anna Stuck, form number DSS 1229. This document is signed by Anna Stuck, January 17, 1973. The signature is contained on the second page and I hand a copy to the appellant.

Mr. Eldridge: Thank you.

The Hearing Officer: Any objection, Mr. Eldridge?

Mr. Eldridge: No objections.

The Hearing Officer: Miss Stuck was this your application for recertification? This is the one that you have in front of you?

Plaintiffs' Exhibit 1, Filed May 2, 1973.

Miss Stuck: This should have Mr. Cummins (phonetic) name down here, I think.

Mr. Eldridge: That is an attorney which: which is not at issue at this point.

The Hearing Officer: Is that your signature on the reverse? On the back?

Miss Stuck: Yes.

The Hearing Officer: Okay, the application of the appellant, the face and reverse thereof, signed by her and dated January 17, 1973 are received in evidence. As one document. Marked Agency's Exhibit A. Proceed.

Mr. Hughes: At this time, Mr. Meyers I would like to introduce the recertification outline. This outline is dated February 2, 1973. It consists of four copy pages. The second and fourth page being the reversed side of the recertification outline. This document is signed by one A. Peters, of the agency on 2/5/73. It was—it was made in the regular course of business of the agency and maintained in the case record of the agency, on Anna Stuck; and I hand a copy to the appellant.

Mr. Eldridge: Thank you.

The Hearing Officer: As a case entry being made by the agency, as part of the agency's case record, the four pages of the recertification outline I received in evidence; as one document, marked Agency's Exhibit B. Proceed.

Mr. Hughes: At this time, Mr. Meyers, I would like to present a notice of intent to reduce public assistance. The document is addressed to Anna Stuck; it is dated February 5, 1973, it indicates that Miss Stuck's assistance will be reduced effective 3/20—or 2/20/73; and it is signed by Mr. T. Lynch of the agency; and it was prepared in the regular course of business with the agency and mailed in the

regular course of business; and maintained in the case record of the agency.

Miss Stuck: I got a letter in the mail that said it was going to—

Mr. Hughes: That is what that says madam. Effective, 2/20/73, assistance is going to be reduced.

The Hearing Officer: This is the form that you received in the mail? This is a copy of the one that you have in front of you?

Miss Stuck: I get $245. That looks like an eight, to me. Right here. That don't look right, there.

The Hearing Officer: Well, that was the form that you received?

Miss Stuck: When they cut it down to $245, yes.

The Hearing Officer: Presumably, this was the basis for your request for the fair hearing.

Miss Stuck: That is right.

The Hearing Officer: Then, the notice of intent to reduce assistance, addressed to the appellant, and dated February 5, 1973, is received in evidence. Marked Agency Exhibit C. Proceed.

Mr. Hughes: I would like to call Mrs. Isaacs, at this time, Mr. Meyers.

The Hearing Officer: Well, just a moment. Mr. Eldridge, am I correct in assuming that the computation of the budget, as such, is not in issue; but rather the fact with regard to the removal of Miss Stuck's needs from the budget?

Mr. Eldridge: Yes, I believe, *Re* computation would be required contingent upon the decision of the Commissioner today.

The Hearing Officer: Okay.

Plaintiffs' Exhibit 1, Filed May 2, 1973.
R. Isaacs, for Appellee, Direct.

EXAMINATION OF MRS. ISAACS

By Mr. Hughes:

Q. Mrs. Isaacs, you had an opportunity to review this file prior to the hearing? A. Yes.

Q. And, are you aware of what occurred to precipitate the action, the action that took place on 2/5/73? A. Yes.

Q. Could you please explain the action of the agency and the reason therefore? A. The agency has removed Anna Stuck from the case. They continue to give assistance to the children. The main reason being, that Miss Stuck refuses to give the agency information so that they may file paternity on the youngest child.

Q. And, the youngest child's name is who? A. Susan Stuck, I believe.

Q. And, does the agency have any information with regard to the alledged putative father of Susan Stuck? A. I believe—on the father of the child she has given the name of the town.

Q. Who is the putative, alledged putative father? Do you know? A. David Campbell.

Q. And, as contained on the recertification form. Is that correct? A. Yes.

Q. Did the agency have any discussion with Miss Stuck regarding the whereabouts of Mr. Campbell? Mrs. Isaacs, does the record indicate that—I will withdraw that question. Does the record indicate anywhere, that Anna Stuck has given us information sufficient for the, for the agency to file a paternity action? A. No, there is not enough information for us to file.

Q. And that was the reason that Miss Stuck was removed from the case. Is that correct? A. That is correct.

Mr. Hughes: I have no further questions of Mrs. Isaacs, Mr. Meyers.

The Hearing Officer: Did Miss Stuck tell you whereabouts of Mr. Campbell?

Mrs. Isaacs: When she made out the recertification, she did give the name of an area. I believe, it is Wellsville.—In New York State. However, we don't have his Social Security Number, address, or any other information that we could use to file.

The Hearing Officer: Did she indicate any place of employment?

Mrs. Isaacs: No, she did not.

The Hearing Officer: She indicate anything with regard to the contact, or lack of contact with Mr. Campbell, that would assist the agency in ascertaining his whereabouts?

Mrs. Isaacs: No, she did not.

The Hearing Officer: What led you to believe that the client was possessed of such information?—At this time?

A. She did know that—she did give us the township, Wellsville, New York; and she has said she did not want to file paternity. And she did not want to give us any further information.

The Hearing Officer: In other words, this was a declaration on her part, that she did not want to assist you in these proceedings?

Mrs. Isaacs: I believe so.

The Hearing Officer: Well, when you say, "you believe", were you present?

Mrs. Isaacs: I was not present at the original discussion, no.

The Hearing Officer: Well then, how did you become possessed of this?

Mrs. Isaacs: We have the information in the case file; and we have spoken to the person who handled the case, which is what we do when we are working on a fair hearing.

Miss Stuck: She only had the case about two days.

The Hearing Officer: Anything further, Mr. Hughes?

Mr. Hughes: Yes, I do.

EXAMINATION OF MRS. ISAACS

By Mr. Hughes:

Q. Mrs. Isaacs, would you look at the third page of Exhibit B, please? Do you have the third page of Exhibit B before you? A. Yes.

Mr. Eldridge: Excuse me, which is the third page?

Mr. Hughes: It is marked page 17.

Q. You note there paragraph C in that exhibit? You note it? A. Yes.

Q. Does that indicate any comment or give any information regarding David Campbell and Miss Stuck and her refusal to assist the agency in filing a paternity action? A. It notes the fact that paternity has not been established, no paternity has been established and client said at the interview that she did not want paternity to be filed at this time.

Plaintiffs' Exhibit 1, Filed May 2, 1973.
R. Isaacs, for Appellee, Cross.

Q. I show you the last page of that exhibit, the fourth paragraph of that exhibit. Is there any indication there with regard to the paternity of Susan Stuck and the activity of Anna Stuck with regard to the filing of the paternity action? A. Yes.

Q. Would you indicate the entry that is made there? A. Mother has made Susan Stuck—"Mother has made no progress in straightening out this matter. She is being removed from case for failure to comply."

Q. What is this matter that is indicated? A. This concerns the paternity of Susan Stuck.

Mr. Hughes: I have no further questions, Mr. Meyers.

The Hearing Officer: Mr. Eldridge?

Mr. Eldridge: Yes, if I may ask Mrs. Isaacs a couple of questions.

EXAMINATION OF MRS. ISAACS

By Mr. Eldridge:

Q. Mrs. Isaacs, there has been testimony that Anna Stuck gave the name and location of Susan Stuck's putative father. What more information is required of Mrs. Stuck before you would continue her grant?

Mr. Hughes: I object to the question as being self serving. He is assuming that all the address has been given. I submit the documents speak for themselves and the testimony has been elicited. If he wishes to question with regard to her testimony, fine. But, he is asking for a conclusion.

Plaintiffs' Exhibit 1, Filed May 2, 1973.
R. Isaacs, for Appellee, Cross.

Mr. Eldridge: She is being terminated for failure to cooperate. I think the question is, what is indeed "cooperation"?

The Hearing Officer: I think the question would merit a response. We are not strictly bound by the rules of evidence. Mr. Hughes.

A. As I understand your question, Mr. Eldridge, what information—information would be required? Is that what you are asking me?

Q. How does she have to cooperate more than she has done, so as not to be terminated? A. This is the name of a town which would not necessarily be enough to find someone. We need an address where he is living and where he works; and then, of course, we would file; and if necessary, she would have to go into court and then she would have to go along on that to.

Q. An address and name is what you say is cooperation? A. Yes.

Q. Noting paragraph C in Agency's Exhibit B, third page, which you read before, there seems to be two different hands. Can you tell me who wrote which?—And when? A. Well, the signature, the original record was written by the worker, A. Peters; and dated 2/5/73 Then this—

Q. Paragraph C, you were referring to? A. Everything on this page down to where it says "signature worker" A. Peters, date, 2/5/73. Then below that, it has to be approved. It has to be, go before the workers immediate supervisor who is a T. Lynch; and he also signed it 2/5/73.

Q. Now, I'm referring to paragraph C, you read along there, there is some things crossed out and a new hand-

writing appears. Can you tell me whose handwriting is which? A. Well, I am not a handwriting expert, Mr. Eldridge.

Q. Well, you do have some familiarity with the people in the agency. Do you not? A. Yes, and I would say that where it says, "she did not want paternity"; and then what you are talking about is, "to be filed at that time".

Q. And yes, initially Ann said, she did not want to file paternity at this time. Is that right? And then that was crossed out. A. Paternity, at this time.

Q. And then— A. He changed the wording, this looks like—

Q. He being, Mr. Lynch? A. It looks like Mr. Lynch's writing, to me.

The Hearing Officer: Mr. Eldridge, would you concede the language there, "did not want to file paternity" and "not want paternity to be filed", is basically—

Mr. Eldridge: No. Anna Stuck "did not want the paternity to be filed", that apparently was filled out by Mr. Lynch after the interview.

The Hearing Officer: Is this the—is this the nub of the whole thing?

Mr. Eldridge: That is one issue which is confused.

The Hearing Officer: Off the record.

(A discussion was held off the record.)

The Hearing Officer: Back on the record.

Mr. Eldridge: That is all I have. Thank you, Mrs. Isaacs.

Plaintiffs' Exhibit 1. Filed May 2, 1973.

The Hearing Officer: Do you have any other witnesses, Mr. Hughes?

Mr. Hughes: I have no further witnesses, Mr. Meyers.

The Hearing Officer: Mr. Eldridge, you are at bat.

Mr. Eldridge: Mr. Meyers, I think the nub of the question here is whether the department can require cooperation in a paternity proceeding as a condition of eligibility for a mother in a ADC grant. I submit to you the U.S. Supreme Court decided three times; Meyers vs. Juras, Doe V. Swank, and Taylor V. Martin. That such a requirement as a condition of eligibility violated the Social Security Act and intent of Congress in passing that act. Federal Regulation 45 CFR 235.70, states the Department of Health, Education and Welfare views any NOLEO requirement, such as this, may not be used as a condition of eligibility. Decision of three judge court—

The Hearing Officer: Mr. Eldridge, you are not pursuading a jury.

Mr. Eldridge: I think it is necessary for only two more citations.

The Hearing Officer: If you desire to place something of this nature in the record, as a position of law, certainly you should file a brief of law.

Mr. Eldridge: I think it would be unnecessary, if you allow me to—Shirley V. Lavine, decision of three judge court of Northern District, New York. June 7, 1972, declaring Onondaga County Department of Social Services utilization as a condition of

eligibility of NOLEO requirement is illegal; and in a matter of Lewis V. Lavine, in the Southern District Court of New York State. In the fall of 1972, a preliminary injunction was granted. Restraining the enforcement of the regulations of which the department relies on today. I would like now to ask Mrs. Stuck a few questions.

EXAMINATION OF MISS STUCK

By Mr. Eldridge:

Q. Miss Stuck, will you please state your full name. A. Anna Dora Stuck.

Q. Mrs. Stuck, will you tell us why you do not wish to bring paternity suit? A. One, is because of what took place before.

Q. What was that that took place before? A. The one Warren suit was not brought on the welfare department. They did not bring the paternity suit on it. It was through the probation department that brought this suit.

Q. Were you required to bring the paternity action on the three oldest children? A. Not by the welfare department, no.

Q. What happened as a result of your filing that action against Warren? A. This happened, well, it takes away a person—almost all of their living.

Q. You mean Warren's living? A. Yes, almost all of it.

Q. How did Warren react to you, finally? A. He brought this to my face all the time. And of course, I work some of the time. Because I worked in Sixty-nine and Seventy.

Plaintiff's Exhibit 1, Filed May 2, 1973.
A. Stuck, for Appellant, Cross.

Q. Did you feel it caused dissention between you and Warren?

Mr. Hughes: I object, in regard to the relationship between her and Warren Davison. It is irrelevant and immaterial.

The Hearing Officer: Is the expressed reason for—she had for not desiring, for her not initiating paternity proceedings with respect to her youngest child, I would think she already expressed her view.

Eldridge: Does the record reflect she felt it a source of dissension between Warren and herself?

The Hearing Officer: She has expressed it.

Q. Do you feel your relationship with David would be similarly hurt. A. Yes, I do. We talked this over ahead of time.

Q. Do you believe David is able to support your youngest child? A. No, no.

Q. Is David disabled? A. Yes, he is.

Mr. Eldridge: That is all I have.

The Hearing Officer: Mr. Hughes?

EXAMINATION OF MISS STUCK

By Mr. Hughes:

Q. Miss Stuck is it your position that you do not want the Commissioner of the Department of Social Services, County of Onondaga, to file a paternity action with regard to your child, Miss Stuck? A. No.

Q. You do not want us to file. Is that correct? A. No.

Q. If the agency filed one, would you cooperate with the agency in prosecuting that paternity action? A. I would not sign the papers.

Plaintiffs' Exhibit 1, Filed May 2, 1973.
A. Stuck, for Appellant, Re-direct.

Q. Would you go to court and testify if you were required? A. That he was the father?

Q. Yes. A. But, no signing papers.

Q. But, you would go to court, if we ask you to go to court? A. To determine he is the father? Yes.

Q. To determine and take the stand to testify that he is the father. A. No.

Mr. Hughes: I ask that the witness not be coached.

The Hearing Officer: I think she should answer for herself.

A. At this time, I would not.

Q. And, you know the whereabouts of David Campbell at this time? A. Only his writing address.

Q. And you have not given the agency full information with regard to where he is located. Is that right? A. I don't know the number. No, because I have never been there.

Mr. Hughes: I have no further questions, Mr Meyers.

Mr. Eldridge: Mr. Meyers, I would like to clarify one point.

EXAMINATION OF MISS STUCK

By Mr. Eldridge:

Q. You say you do know the mailing address? A. But, I don't know the number. I did before he moved.

The Hearing Officer: Okay?

Mr. Eldridge: May we just clarify one point.

Plaintiffs' Exhibit 1, Filed May 2, 1973.
A. Stuck, for Appellant, Re-direct.

Q. Miss Stuck, if the department began an action, themselves, without requiring you to bring the action and the court ordered you to appear, requiring you by law to appear, under penalty of going to jail for not appearing, would you appear then? —Or not? A. I would appear for all locations of the father; but no signing papers.

Mr. Eldridge: Thank you. We rest.

Mr. Hughes: I have one further question of Miss Stuck. You realize, that if you are ordered to appear by the court, you must take the stand and indicate when you conceived Susan; and what the relationship between you and David was. Are you willing to testify on that matter?

Miss Stuck: I don't think this was the issue. It is on the grounds of paternity and the money that was being reduced.

Mr. Hughes: Mr. Meyers, I have no further questions.

The Hearing Officer: Okay.

Mr. Hughes: I do have a statement I would like to make for the record.

The Hearing Officer: Just a moment. Miss Stuck, you have indicated at one point that you are adverse to initiate any paternity proceedings against David Campbell on your own.

Miss Stuck: No, I did not. I told the workers that I would not sign paternity.

The Hearing Officer: Yes, you didn't want to start the paternity proceedings against David Campbell, yourself.

Miss Stuck: No.

The Hearing Officer: Is that correct?

Miss Stuck: Right.

The Hearing Officer: All right. Now, you have also indicated today that you do not desire that Onondaga County do so.

Miss Stuck: No, because of the further business with Warren. This is my reason.

The Hearing Officer: That is your fixed position. You not only don't want Onondaga County to start the action; but you don't want to start one on your own.

Mr. Eldridge: Mr. Hearing Examiner, her want has no bearing on the Department's ability to file that action, as you well know.

The Hearing Officer: It is her intent, Mr. Eldridge. The case is closed.

Mr. Hughes: Mr. Meyer, I would like to make a brief statement for the record. I would like to address myself to some of these citations made by Mr. Eldridge.

The Hearing Officer: With respect to the same point that I made with regard to Mr. Eldridge, I would point out that if either of you desire something in the nature of case citations be spread on the record, this may be done in the form of a brief at law. —Which should be filed. This is a hearing that is designed for the purpose of developing facts and not for the purpose of developing legal opinions. As such, if either of you desire that such citations be considered, you may ask at this point that the case

decision be deferred pending receipt of appropriate citations at law.

Mr. Hughes: In that event, Mr. Meyers, I have no further statement for the record.

The Hearing Officer: Then, the case is closed and there will be a decision from Albany.

Certified to be a true and correct transcript of the minutes taken at this fair hearing.

CHARLES F. DEZOLT,
Hearing Reporter.

Exhibits Received at Fair Hearing.
Decision After Fair Hearing.
Answer to Amended Complaint on Behalf of State Defendant.

Exhibits Received at Fair Hearing

The "Recertification Outline", the "Notice of Intent to Reduce Public Assistance" and the "Certification of Need for Public Assistance" are printed as attachments to the Answer to the Amended Complaint on Behalf of the State Defendant as is the "Agency Summary."

Decision After Fair Hearing

The Decision After Fair Hearing dated March 7, 1973 is printed as an attachment to the Answer to the Amended complaint on Behalf of the State Defendant.

Answer to Amended Complaint on Behalf of State Defendant

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

Defendant Abe Lavine, individually and as Commissioner of the Department of Social Services of the State of New York, by Louis J. Lefkowitz, Attorney General of the State of New York, for his answer to the amended complaint herein and without prejudice to his opposition to the Court's order of April 9, 1973:

Answer to Amended Complaint on Behalf of State Defendant.

1. Denies each and every allegation contained in Part "I" (Preliminary Statement) of the amended complaint.

2. Denies each and every allegation contained in Part "II" (Nature of Action) of the amended complaint.

3. Denies each and every allegation contained in Part "III" (Jurisdiction) of the amended complaint.

4. Denies each and every allegation contained in Part "IV" (Three Judge Court) of the amended complaint.

5. Denies each and every allegation contained in Part "V" (Plaintiffs) of the amended complaint upon the grounds that defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity thereof, except admits upon information and belief that Anna Stuck has a family household consisting of herself and four minor children aged two, eight, nine and twelve years, and that she receives a public assistance grant on behalf of said minor children.

6. Denies each and every allegation contained in Part "VI" (Class Action) of the amended complaint.

7. Admits the allegations of Part "VII" (Defendants) of the amended complaint, and affirmatively alleges that defendant Lavine is responsible for the administration of the AFDC program statewide and that the responsibilities of defendant Lascaris are local only and subject to the supervision of Defendant Lavine.

8. Denies each and every allegation contained in Part "VIII" (Statement of Claim) of the amended complaint except:

Answer to Amended Complaint on Behalf of State Defendant.

(a) Admits upon information and belief that Anna Stuck has been receiving public assistance for her four infant children.

(b) Admits that Anna Stuck applied to the Onondaga County Department of Social Services for recertification for public assistance, and that she did so on January 17, 1973.

(c) Affirmatively alleges that on or about March 1, 1973 a fair hearing was held with regard to the adequacy of the grant of Aid to Dependent Children to said Anna Stuck. Attached hereto and made a part hereof is a copy of fair hearing decision dated March 7, 1973, and copies of Exhibits "A", "B" and "C" admitted thereat, together with a copy of the summary for fair hearing prepared by the Onondaga County Department of Social Services dated February 23, 1973. Said fair hearing decision of March 7, 1973 recited as follows:

"Appellant refused to disclose the location of the putative father of her youngest child. Appellant conceded at the fair hearing that she knew the mailing address of the putative father and had declined and still refused to disclose it. She had told the agency his name and the community where he presumably resided.

"The record establishes that appellant had declared that she would not initiate paternity proceedings and desired that the agency not do so. Based upon the degree of cooperation received from appellant as to other information about the putative father, the agency properly found appellant's lack of cooperation to be a basis for termination of her assistance."

(d) That defendant Lavine's affirmance of the agency action was based on the recipient's lack of cooperation, not her failure to institute a proceeding. Defendant affirmatively alleges that under the provisions of New York Social Services Law, § 101-a(2) (3) the grant of assistance to a parent or caretaker relative may be discontinued only as provided therein and cannot be discontinued for failure to "institute" a paternity or non-support proceeding. Attached is Administrative Letter dated November 6, 1972, 72PWD-174. The Administrative Letter provides that pending promulgation of regulations implementing Social Services Law, § 101-a, local districts are directed to act in accordance with instructions contained in the Administrative Letter.

9. Denies each and every allegation contained in Part "IX" (Plaintiffs' First Cause of Action, Plaintiffs' Second Cause of Action) of the amended complaint.

10. Denies each and every allegation, argument and conclusion of the amended complaint not herein admitted, controverted or specifically denied.

FIRST AFFIRMATIVE DEFENSE:

11. As to the plaintiffs named in the original complaint, the amended complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE:

12. As to the intervening plaintiff Anna Stuck, the amended complaint fails to state a claim upon which relief can be granted.

Answer to Amended Complaint on Behalf of State Defendant.

THIRD AFFIRMATIVE DEFENSE:

13. The Court lacks jurisdiction of the subject matter in that:

(a) The Court lacks jurisdiction under 28 U.S.C. § 1343 in that the amended complaint fails to present a substantial constitutional question, and by reason thereof, this Court lacks jurisdiction to determine any pendent statutory question;

(b) The Court lacks jurisdiction under 28 U.S.C. § 1331 in that plaintiffs have not satisfied the requirements thereof;

(c) The Court lacks jurisdiction in that the cause of action has become moot as matter of law by reason of the mandate of the Supreme Court of the United States and plaintiffs' failure to comply therewith.

FOURTH AFFIRMATIVE DEFENSE:

14. The Court lacks jurisdiction to award damages as prayed for in the amended complaint against defendant.

FIFTH AFFIRMATIVE DEFENSE:

15. The plaintiffs lack standing to maintain this action and lack capacity to sue

SIXTH AFFIRMATIVE DEFENSE:

16. There is no actual case or controversy before the Court; there is no justiciable controversy before the Court.

Answer to Amended Complaint on Behalf of State Defendant.

SEVENTH AFFIRMATIVE DEFENSE:

DEFENDANT ALLEGES, UPON INFORMATION AND BELIEF:

17. That New York Social Services Law, § 353 provides for an administrative appeal to the State Department of Social Services from the action or failure to act of a local social services official, and for a fair hearing thereon.

18. That intervening plaintiff Anna Stuck has received a fair hearing and "Decision After Fair Hearing" dated March 7, 1973 is annexed hereto and made a part hereof.

19. That plaintiffs Shirley, Anderson and Doe (B.H.) have not applied pursuant to section 353 of the New York Social Services Law for an administrative appeal arising out of circumstances connected with this case according to Departmental records.

20. That the plaintiffs, other than the intervening plaintiff Anna Stuck, have failed to exhaust administrative remedies. Said plaintiffs and intervening plaintiff have failed to exhaust State judicial remedies.

EIGHTH AFFIRMATIVE DEFENSE:

21. New York Social Services Law, § 101-a(2) (3) is valid and constitutional.

WHEREFORE defendant Lavine prays that this Court:

(a) Deny the injunctive, declaratory and other relief sought by the plaintiffs;

(b) Dismiss the amended complaint and the action or, in the alternative, declare that New York Social Services Law § 101-a(2) (3) is valid and constitutional;

(c) That defendant Lavine have such other, further and different relief as to the Court may seem just and proper, together with costs and disbursements.

ALAN W. RUBENSTEIN,
Principal Attorney, *of Counsel*,

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,
Attorney for Defendant Lavine,
The Capitol,
Albany, New York 12224,
Telephone: (518) 474-7178.

(Verification Omitted in Printing.)

Administrative Letter No. 72 PWD-174, Dated November 6, 1972, From Deputy Commissioner Russo to Commissioners of Social Services—Attached to Answer

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
1450 Western Avenue
Albany, New York 12203

ABE LAVINE
Commissioner

ADMINISTRATIVE LETTER

Transmittal No.: 72 PWD-174

Date: November 6, 1972

To: Commissioners of Social Services

Subject: Implementation of 1972 Legislation Pertaining to Location of Deserting Parents and Fathers of Children Born Out of Wedlock

Distribution: B-4 All Child Welfare Staff
B-6 All Public Assistance Staff

Chapter 687 of the Laws of 1972, effective September 1, 1972, amends Social Services Law Sections 372-a and 101-a. The revisions require that additional items of information be included in the referral to the Department's Bureau of Registry and Location and also require, rather than permit, Social Services officials to file petitions for support from deserting parents and the fathers of children born out of wedlock when the applicant or recipient of assistance has failed to file such a petition. In addition, the revisions to the Social Services Law Section 372-a now provide a statutory mandate for current Department Regulations requiring Social Services officials to make full

Administrative Letter No. 72 PWD-174, Dated November 6, 1972, From Deputy Commissioner Russo to Commissioners of Social Services, Attached to Answer.

use of the Bureau of Registry and Location for the location of fathers of children born out of wedlock as well as other deserting parents when the children of such parents are recipients of or likely to become in need of such assistance.

In making a referral to the Bureau of Registry and Location all the following information, when available, must be reported on Form DSS-1176 (Formerly RL-109a). New York City centers will continue to use Form DSS-1039 for this purpose.

(a) The full and true name of each such parent together with any known aliases and last known address;

(b) his date and place of birth;

(c) his physical description;

(d) his social security number;

(e) his employment history;

(f) his military record;

(g) any police record; [and]

(h) whether a proceeding has been instituted against such parent or father to enforce the laws respecting the desertion, abandonment and support of such children and the time when such proceeding was instituted.

(i) whether a proceeding has been instituted in this or any other state pursuant to the provisions of the uniform support of dependents law; (If applicable,

Administrative Letter No. 72 PWD-174, Dated November 6, 1972, From Deputy Commissioner Russo to Commissioners of Social Services, Attached to Answer.

include in "Absent Parent—Marital History" section of Form DSS-1176 and "Court Record" section of Form DSS-1039) and

(j) any further information that may be of assistance in locating him (Use separate sheet for this purpose).

The amendments to Section 101-a require that commissioners *shall* institute proceedings under the appropriate provisions of the Family Court Act to obtain support or contributions to support such children in the event an applicant or recipient of public assistance fails to do so.

The procedures required to implement the intent of legislation are as follows:

1. In each appropriate ADC case, all information concerning the whereabouts of a deserting parent or parent of a child born out of wedlock shall be investigated immediately; and

   (a) If the whereabouts of the deserting parent or parent of a child born out of wedlock are known, a petition for support shall be filed by the applicant or Commissioner within fifteen days after the case is opened.

   (b) If the whereabouts of the deserting parent or parent of a child born out of wedlock are unknown, immediate notice shall be given to the law enforcement official in accordance of Section 352 of the Social Services Law, and referral made to the Department Bureau of Registry and Location. (Bulletin 168)

Administrative Letter No. 72 PWD-174, Dated November 6, 1972, From Deputy Commissioner Russo to Commissioners of Social Services, Attached to Answer.

NOTE: Parts 1 (a) and (b) do not supersede the 90 day Waiver related to the birth of an out of wedlock child. When a waiver of investigation is filed in accordance with Department Regulation 351.2c(2), no action need be instituted. Action should be instituted at the end of the 90 day period if appropriate.

2. When current (within 60 days) information is obtained as to the whereabouts of the deserting parent or parent of a child born out of wedlock, the following action shall be taken:

(a) A fifteen day notice of discontinuance of assistance pursuant to 358.9 of Department Regulations shall go to the client routinely, if the information supplied places the deserting parent or parent of a child born out of wedlock in the home of the client. The case is presumed to be ineligible since the deserting parent is alleged to be in the home of the recipient.

(b) A petition for support shall be filed by the client or commissioner within 15 days if the information received places the deserting parent or parent of a child born out of wedlock outside of the home.

(c) Pertinent information shall be forwarded to the Probation Department, for appropriate action, within 15 days if a support order is already in existence, but in default or arrears.

Administrative Letter No. 72 PWD-174, Dated November 6, 1972, From Deputy Commissioner Russo to Commissioners of Social Services, Attached to Answer.

3. When the information concerning the whereabouts of the deserting parent or parent of a child born out of wedlock is more than sixty days old and the local Desertion and Support Unit shall investigate the leads obtained within 15 days in order to determine the current address of the absent parent. If the address is verified, a petition for support shall be filed immediately by the client or Commissioner.

NOTE: Filing of a petition includes proceedings pursuant to the Uniform Support of Dependents Law.

4. Agencies will be required to report on the use of information received from the Bureau of Registry and Location within 30 days of receipt of information. Appropriate forms for this purpose will follow.

5. When facts and evidence related to possible fraud are ascertained, action should be taken in accordance with Bulletin 169.

The Department will promulgate regulations to implement the amendments to Sections 372-a and 101-a. Pending these changes, local social services districts are to act in accordance with instructions contained in this administrative letter.

SOLOMON B. RUSSO
Deputy Commissioner

Decision After Fair Hearing, Dated March 7, 1973, in the Matter of the Appeal of Anna Stuck— Attached to Answer

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

In the Matter
of
The Appeal of ANNA STUCK

From a determination by the Onondaga County Department of Social Services (hereinafter called the agency).

A fair hearing was held at 333 East Washington Street, Syracuse, New York, on March 1, 1973, before William R. Meyers, Hearing Officer, at which appellant, appellant's representative and representatives of the agency appeared. The appeal is from a determination by the agency relating to the adequacy of a grant of aid to dependent children, in that the agency determined to reduce appellant's regularly recurring grant. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant, aged 35, has a family household consisting of herself and her four minor children, aged 2, 8, 9 and 12 years.

(2) Appellant, a recipient of public assistance for sometime past, applied for recertification for public assistance on January 17, 1973.

Decision After Fair Hearing, Dated March 7, 1973, In the Matter of the Appeal of Anna Stuck, Attached to Answer.

(3) Appellant declared to an agency employee at the time of such reapplication that she did not want paternity proceedings to be commenced against the putative father of her youngest child.

(4) The agency inquired as to the whereabouts of the putative father, his employment and other facts known to appellant which she refused to disclose to agency personnel.

(5) The agency determined to remove appellant's needs from the regularly recurring grant for her lack of cooperation.

(6) The agency sent a Notice of Intent to Discontinue appellant's grant on February 5, 1973, to be effective February 20, 1973. The appellant requested a fair hearing to review the agency's proposed action on February 8, 1973. The agency was not notified by the State Department of Social Services that appellant's grant must be continued without change until a fair hearing decision is issued.

The agency should have been notified by the State Department of Social Services to continue appellant's grant unchanged pending the fair hearing decision as required by Section 358.8 of the Regulations of the State Department of Social Services. Therefore, the agency now must restore appellant's grant in full retroactively from the date of reduction to the date of this decision.

Subdivision (c) of Section 351.2 of the Regulations provides in paragraph (2) (i) thereof that there shall be reviewed with the applicant the whereabouts of close relatives, and their ability and willingness to assist.

Decision After Fair Hearing, Dated March 7, 1973, In the Matter of the Appeal of Anna Stuck, Attached to Answer.

Appellant refused to disclose the location of the putative father of her youngest child. Appellant conceded at the fair hearing that she knew the mailing address of the putative father and had declined and still refused to disclose it. She had told the agency his name and the community where he presumably resided.

The record establishes that appellant had declared that she would not initiate paternity proceedings and desired that the agency not do so. Based upon the degree of cooperation received from appellant as to other information about the putative father, the agency properly found appellant's lack of cooperation to be a basis for termination of her assistance.

The agency has continued assistance for the other members of appellant's household.

DECISION: The determination of the agency is affirmed. However, the agency is directed to take appropriate action in accordance with the foregoing decision and the agency is directed further to report to the Syracuse Office of the fair hearing section on its action taken pursuant to this decision in accordance with the provisions of Section 358.22 of the Regulations of the State Department of Social Services.

Dated: Albany, New York.
Mar 7 1973.

ABE LAVINE,
Commissioner.

By CARMEN SHANG,
Assistant Commissioner.

Agency Summary re: Anna Stuck, Dated February 23, 1973—Attached to Answer

(Onondaga County Seal)
COUNTY OF ONONDAGA
DEPARTMENT OF SOCIAL SERVICES
County Office Building
Syracuse, N. Y. 13202

John L. Lascaris
Commissioner

February 23, 1973

Mr. William Carr
Office of Counsel
New York State
Department of Social Services
1450 Western Avenue
Albany, New York

Re: Anna Stuck
400 Wyoming Street
03-83243

Dear Mr. Carr:

The agency presents the following summary in response to the appellant's request for a Fair Hearing dated 2/6/73 based on discontinuance.

Appellant's family composition consists of herself, birth date 7/24/37, and her four children, Rose Davison, birth date 7/15/60, Warren Davison, birth date 3/5/63, Lawrence Davison, birth date 1/8/65 and Susan Stuck, birth date 4/26/70.

On 2/5/73 appellant was sent a letter informing her that her assistance would be reduced effective 2/20/73 for failure to comply.

Agency Summary re: Anna Stuck, Dated February 23, 1973, Attached to Answer.

Appellant has been removed from the grant effective 2/20/73 since she refused to comply in establishing paternity on her youngest child, Susan Stuck. When appellant came in for her recertification on or about 2/2/73 she was questioned about the paternity of her youngest child. The putative father is a Mr. David Campbell but paternity has never been established and appellant was not willing to give any further information about Mr. Campbell. She stated she did not want paternity to be filed at this time. Therefore, appellant's assistance was discontinued in accordance with N.Y.S. Code Rules and Regulations Sec. 351.2 (e)(2)(vi)(vii).

Assistance is being continued to appellant's children and the budget is computed as follows:

Pre-Add	(4/5 of $256.00)	$204.80
Rent	(4/5 of $101.00)	80.80
Total Needs		$285.60

Paternity has been established on appellant's other three children.

Very truly yours,

ONONDAGA COUNTY,
Department of Social Services,
JOHN L. LASCARIS, *Commissioner.*

(Mrs.) MARY G. CROSSLEY, *C.S.W.*,
Fair Hearing Supervisor Grade A.

(Mrs.) Pamela J. Testone,
Case Worker.

PJT:eld

POOR COPY

"Recertification Outline"—Attached to Answer.

RECERTIFICATION OUTLINE

Date of Recert. [illegible] Recert Period [illegible]

Non Rem [illegible]

Living Arrangements:

Rooms LR ✓ DR ___ K ✓ No. of BR's [illegible] Total No. of Rms 5 House ___ Flat ✓

Co-op Case Name [illegible]

Case Number ___ No. of People ___

Living with PR Family: Name [illegible] No. of People ___

Relationship [illegible]

Current Employment Date Started ___ Clock No. ___

Name of Employer [illegible]

Address [illegible]

Dates & Amounts of Last four pays (Gross) [illegible]

Year to Date Total [illegible] Date of Check [illegible]

If unemployed, dates of last employment [illegible]

Last Employer [illegible]

Address [illegible]

Reason for Leaving [illegible]

Employability

In Work Reform? Yes ___ No ✓ In Work Relief? Yes ___ No ✓

In CET? Yes ___ No ___

If not, identify program, state reason(s) [illegible]

Work Related Benefits (UIB, WCSB, Workmen's Comp., Soc. Sec. etc)

Type [illegible] Date Started [illegible] Amount ___

How Verified [illegible]

Other [illegible]

Eligibility for Vets Benefits? Yes ✓ No ___

If no, explain ___

Name of Vet [illegible]

Date of Last VB-1 Requested 2/3/73 Amt of Benefit [illegible]

UB-1 - [illegible]

Family Case ... as early ... periodic ... certain information ... to client's ...
... client wish to partici... ...?
If yes, date ... and ... Intake Intel Form filed ...

For continuation of comments started on front side:

P

Resources (Refer to DSS-1229, Section H):

List Type of Resource, how Verified, and Disposition:

Client owned Property: Yes__ No__ 2nd Mtge Taken? Yes__ No__

Is Verification (Resource Green Sheet) in Record? Yes__ No__

Date Property Info Referred to Resource Div.__

Support for Dependent Children

A. Father	Children	Status
1.		
2.		
3.		

B. Current Court Order

Father	Start Date	Amt	Period	Date Last Paymt	Ver.
1.					
2.					
3.					

C. If no Current Court Order, Explain:

D. Deserting Parent:

Father	1176 Filed?	Date of Filing
1.		
2.		

Reason for Category

Signature of Worker A. Peters Date 2/5/73

Pending__ Approved✓ Approved-Pending__ Disapproved__

Supervisor Signature [signature] Date 2/5/73

Supervisory Comments:

Approved, since you have already filed for paternity.

This case was first reported to the Associated Press and many persons in the case regarding the welfare of the children. This worker spoke with Cathy Larsen at Huntington. Family Service entered reported that things were to be going all right at the time. Several years to Huntington typewriting as work in Mrs. Shirk's class. Lowered to this grammar. The three adult children attended Lawrence High School. Lawrence had an average grade. dept school is to be between ... Physical operations ... Christ Church that Mrs. Howard Lossin, father of the three children, stays with the each week when he comes from Middletown to visit the children. She receives no word from him.

X ... There is no dispute over the paternity of Susan Shirk. Mrs. Howard Lossin, grandmother, stepfather and the mother does not bring removal from care for failure to support.

... Mrs. Shirk volunteered for the WPA program and is looking for a job.

... It is unlikely that this family could become self-supporting.

"Notice of Intent to Reduce Public Assistance"--Attached to Answer.

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES
600 South State Street
Syracuse, New York 13202

NOTICE OF INTENT TO REDUCE PUBLIC ASSISTANCE

Received Hearing Section 3/1/73

Name of Recipient: Anna Stuch

Zone: 2

Address: 400 Wyoming St.
Syracuse, N.Y. 13204

Category and Case: 03-81243

Date: 2/5/73

This is to advise you that this department intends to reduce your public assistance grant from $357.00 to $283.60 effective 2/20/73 for the following reason(s):

Failure to comply.
See enclosed budget worksheet.

You may have a conference at this department to review your case at any time before the proposed date of reduction of your grant.

Please telephone **Supervisor, Mr. T. Lynch** at **477-7737** for an appointment.

T. Lynch
(Signed)

Mr. T. Lynch

2/5/73
(Date)

RIGHT TO FAIR HEARING

If you believe that your assistance should not be reduced, you may request a state fair hearing by telephoning 474-5951, Ext. 516 or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of your hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why your assistance should not be reduced as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you request a fair hearing before the date your assistance is proposed to be reduced, you will continue to receive your assistance unchanged until the fair hearing decision is issued. Community legal services are available to you at Onondaga Neighborhood Legal Services, Inc., 633 South Warren Street, Syracuse, New York 13202 and Frank H. Hiscock Legal Aid Society, 433 South Warren Street, Syracuse, New York 13202.

FORM DSS-4328 (REV. 2/78)

CERTIFICATION OF NEED FOR PUBLIC ASSISTANCE

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

APP. 2 DUP. ☐ NEW ☑ RECERT. | SOCIAL SERVICES DISTRICT: Onondaga County | CASE NO.: 03-83293

A. I, (PRINT YOUR NAME) Anna Alora Stuck CERTIFY THAT

I NEED PUBLIC ASSISTANCE FOR (CHECK ONE BOX) ☐ MYSELF ☑ MYSELF AND MY FAMILY,

BECAUSE: ☐ I (WE) HAVE NO INCOME FROM ANY SOURCE

(CHECK ONE BOX) ☐ MY (OUR) INCOME AND RESOURCES ARE NOT ENOUGH TO MEET MY (OUR) LIVING NEEDS.

I HAVE SHOWN THE AMOUNT OF MY (OUR) INCOME AND RESOURCES ON THE OTHER SIDE.

I (WE) LIVE AT: NO. 400 STREET Wyoming St APT. NO. 1st FLOOR Syracuse CITY N.Y. 13204 ZIP CODE

B. SOCIAL SECURITY INFORMATION

1. MY NUMBER IS 090-30-1192
MY SPOUSE'S NO. IS —

2. I ☐ AM ☑ AM NOT RECEIVING SOCIAL SECURITY BENEFITS AT THIS TIME

3. I ☐ AM ☑ AM NOT ENROLLED IN MEDICARE (IF YOU ARE ENROLLED, WHICH PART(S)?)
☐ PART A ☐ PART B

4. MY SOC. SEC. OR RAILROAD CLAIM NO. IS

I WAS BORN ON: MONTH 7 DAY 24 YEAR 97

I CAN BE REACHED BY CALLING: TELEPHONE NUMBER —

MY MAIDEN NAME IS: (IF MARRIED WOMAN) Not married —

C. THE FOLLOWING PEOPLE ARE IN MY FAMILY, NEED PUBLIC ASSISTANCE AND ARE INCLUDED IN THIS APPLICATION

	FULL NAME	RELATIONSHIP TO ME	MALE / FEMALE	DATE OF BIRTH	MARRIED OR SINGLE
SELF	Anna Alora Stuck	self	F	7/24/97	S
SPOUSE	NONE				
	Rosa Davison	daughter	F	11/15/60	S
	Shawn Davison Jr	son	M	2/1/63	S
	Lawrence Davison	son	M	1/4/64	S
	Susan Stuck	daughter	F	11/1/61	S

D. THE FOLLOWING CHILDREN WHO ARE LISTED ABOVE HAVE ONE OR BOTH PARENTS LIVING ELSEWHERE

NAME OF CHILD	NAME AND ADDRESS OF PARENT WHO LIVES ELSEWHERE	SUPPORT PAID (CHECK ONE)	SOCIAL SECURITY NO. OF PARENT
Rosa Davison	William Davison Jr. Bellevue, Neb. paternity established	☑ YES ☐ NO	Not Known
Shawn Davison Jr.	" " paternity established	☑ YES ☐ NO	not known
Lawrence Davison	" " paternity established	☐ YES ☐ NO	not known
Susan Stuck	Wanda Campbell Baltimore, Md	☐ YES ☑ NO	not known

E. THE FOLLOWING PEOPLE LIVE WITH ME AND ARE NOT INCLUDED IN THIS APPLICATION

FULL NAME	RELATIONSHIP TO ME	MALE / FEMALE	AGE, IF RELATIVE	SELF-SUPPORTING (YES OR NO)	ALREADY RECEIVING PUBLIC ASSISTANCE: YES	NO	EXPLAIN	CASE NUMBER	MONTHLY GRANT
No one else lives with this family									

F. THE FOLLOWING PEOPLE WHO DO NOT LIVE WITH ME ARE THE LEGAL SPOUSES OF MYSELF AND OF OTHER INDIVIDUALS INCLUDED IN THIS APPLICATION

PERSON IN HOUSEHOLD WHO IS MARRIED	NAME AND ADDRESS OF LEGAL SPOUSE	MONTHLY AMOUNT OF SUPPORT PAID	SOCIAL SECURITY NO. OF SPOUSE
No one is married - Anna Alora Stuck owns			

G. (CHECK ONE BOX) ☐ OWN MY HOME ☑ PAY RENT FOR HOUSING ☐ HAVE NO HOUSING EXPENSES

I OWN MY HOME AND HAVE THE FOLLOWING EXPENSES:

1. THERE IS A MORTGAGE ON MY HOME ☐ YES ☐ NO
MY MONTHLY MORTGAGE PAYMENT IS $ _____ THIS PAYMENT INCLUDES: ☐ TAXES ☐ INSURANCE
THE NAME AND ADDRESS OF MORTGAGE HOLDER IS: _____

2. THE YEARLY EXPENSES FOR MY HOME ARE: PROPERTY TAXES $ _____ FIRE INSURANCE $ _____
WATER $ _____ OTHER (SPECIFY) _____ $ _____

3. PART OF MY HOME IS: ☐ RENTED ☐ NOT RENTED (SPECIFY) _____ $ _____

I RENT MY HOME AND HAVE THE FOLLOWING EXP.

1. MY MONTHLY RENT IS $ 400.00
2. MY LANDLORD SUPPLIES THE FOLLOWING: ☐ HEAT ☐ GAS ☑ ELECTRICITY ☐ FURNITURE ☐ REFRIGERATOR ☐ STOVE ☐ OTHER (SPECIFY)
3. MY MEALS ☐ ARE ☑ ARE NOT INCLUDED IN MY RENT
4. I BUY THE FOLLOWING MEALS IN A RESTAURANT: ☐ BREAKFAST ☐ LUNCH ☐ DINNER (SPECIFY) Evenings only
5. MY LANDLORD'S NAME AND ADDRESS IS: NAME Salvation Army ADDRESS _____

H. IDENTIFIED BELOW ARE THE INCOME AND RESOURCES IN MY HOUSEHOLD

INCOME

TYPE	CHECK EITHER YES OR NO	AMOUNT	NAME OF PERSON HAVING INCOME
SALARY AND WAGES - GROSS (WEEKLY)	☐ YES ☑ NO	IF "YES" REQUEST AND COMPLETE WAGE INCOME SUPPLEMENT FORM	
UNEMPLOYMENT INS. (WEEKLY)	☐ YES ☑ NO		
WORKMEN'S COMPENSATION (WEEKLY)	☐ YES ☑ NO		
N.Y. STATE DISABILITY INS. (WEEKLY)	☐ YES ☑ NO		
VETERAN'S BENEFITS (MONTHLY)	☐ YES ☑ NO		
SOCIAL SECURITY (MONTHLY)	☐ YES ☑ NO		
CONTRIBUTIONS FROM RELATIVES (MONTHLY)	☐ YES ☑ NO		
COURT ORDER PAYMENTS (MONTHLY)	☑ YES ☐ NO	$15.00	
OTHER INCOME (WRITE TYPE) _____	☐ YES ☑ NO		

RESOURCES

TYPE	CHECK EITHER YES OR NO	AMOUNT OR VALUE	NAME OF PERSON OWNING RESOURCE
BANK ACCOUNTS	☐ YES ☑ NO		
STOCKS AND BONDS	☐ YES ☑ NO		
LIFE INSURANCE (FACE VALUE)	☐ YES ☑ NO		
REAL ESTATE EXCLUDING OWN HOME	☐ YES ☑ NO		
OTHER RESOURCES (Incl. cash) (WRITE TYPE) _____	☐ YES ☑ NO		
MEDICAL INSURANCE Blue Cross	☑ YES ☐ NO	NAME OF COMPANY:	

I ☐ AM ☑ AM NOT INVOLVED IN A LEGAL ACTION WHICH MAY RESULT IN A MONEY AWARD. THE NAME AND ADDRESS OF MY ATTORNEY IS: _____

THE FOLLOWING UNEMPLOYED MEMBERS OF MY FAMILY ☐ HAVE ☐ HAVE NOT REGISTERED FOR UNEMPLOYMENT INSURANCE BENEFITS.
not eligible

THE FIRST CHECK IS EXPECTED _____ 19__

I. ☐ I (WE) ☐ HAVE ☑ HAVE NOT MOVED WITHIN THE PAST 12 MONTHS
THE ADDRESS WHERE I LIVED BEFORE IS: Grossman St Syracuse, N.Y.

J. IN PREPARING THIS APPLICATION I HAD HELP FROM (SIGNATURE) X A Peters
WHO HELPED AT Levo S. State Street - Dept of Social Services, BUT I UNDERSTAND AND APPROVE ALL STATEMENTS.

K. I hereby certify that the information given on this application is true and correct. I agree to inform the agency promptly, of any change in my needs, income, property, living arrangements or address. I further certify that I am not now receiving public assistance and that I have not given any of my property to anyone to get public assistance. I acknowledge that this is a legal document and that untrue statements can subject me to legal action for fraud.

SIGNED X Anna Stuck
DATE SIGNED Jan 17, 1983

IF SIGNED WITH AN X
SIGNATURE OF WITNESS X _____
ADDRESS OF WITNESS _____

APPLICANT LEAVE BLANK

DISPOSITION
☑ ELIGIBLE 285.42 AMOUNT DHS PER
☐ WITHDRAWN
☐ INELIGIBLE
REASON ADC - Unemployed Father in home
CASEWORKER'S SIGNATURE X A Peters
DATE SIGNED 3/4/83

Certification of Need for Public Assistance—attached to Affidavit.

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Answer to Amended Complaint on Behalf of County Defendant

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

Defendant John L. Lascaris of the Department of Social Services of the County of Onondaga, by his Attorney John L. LaParo, Acting Welfare Attorney, James H. Hughes, Assistant Welfare Attorney, of counsel, for his answer to the amended complaint herein, without prejudice to his opposition to the courts order of April 9, 1973:

1. Denies each and every allegation contained in Part "I" (Preliminary Statement); Part "II" (Nature of Action); Part "III" (Jurisdiction); Part "IV" (Class Action); Part "IX" (First Cause of Action and Plaintiffs Second Cause of Action); of the amended complaint.

2. Denies each and every allegation contained in Part "V" (Plaintiffs) of the amended complaint upon the grounds that defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity thereof, except admits that Anna Stuck has a family household consisting of herself and four minor children ages 12, 9, 8, $2\frac{1}{2}$, years, that she presently resides with her children at 400 Wyoming Street, Syracuse, N.Y., and that she receives a public assistance grant on behalf of said minor children.

3. Admits the allegations of Part "VII" (Defendants) of the amended complaint, and affirmatively alleges that defendant Lascaris is responsible for the administration of the welfare laws and policies of the State of New York as they effect the County of Onondaga, and is further subject to the supervision of defendant Lavine.

Answer to Amended Complaint on Behalf of County Defendant.

4. Denies each and every allegation contained in Part "VIII" (Statement of Claim) of the amended complaint, except:

(a) Admits that Anna Stuck has been receiving public assistance for her four infant children.

(b) Admits that Anna Stuck applied to the Onondaga County Department of Social Services for recertification for Public Assistance, and that she did so on January 17, 1973.

(c) Affirmatively alleges that on or about March 1, 1973 a Fair Hearing was held with regard to the adequacy of the grant of Aid to Dependent Children to said Anna Stuck. On March 7, 1973, the defendant Lavine issued a Fair Hearing decision recited as follows:

"Appellant refused to disclose the location of the putative father of her youngest child. Appellant conceded at the Fair Hearing that she knew the mailing address of the putative father and had declined and still refused to disclose it. She had told the agency his name and the community where he presumably resided."

"The record establishes that appellant had declared that she would not initiate paternity proceedings and desired that the agency not do so. Based upon the degree of cooperation received from appellant as to other information about the putative father, the agency properly found appellant's lack of cooperation to be a basis for termination of her assistance."

(d) That pursuant to the foregoing Fair Hearing decision, defendant Lascaris continued assistance to the four minor children of the family of Anna Stuck and continued to deny assistance to Anna Stuck.

5. Denies each and every allegation, argument, and conclusion of the amended complaint not herein admitted, controverted, or specifically denied.

FIRST AFFIRMATIVE DEFENSE:

6. As to the plaintiffs named in the original complaint, the amended complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE:

7. As to the intervening plaintiff Anna Stuck, the amended complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE:

8. The Court lacks jurisdiction of the subject matter in that:

(a) The Court lacks jurisdiction under 28 U.S.C. Sec. 1343 in that the amended complaint fails to present a substantial constitutional question, and by reason thereof, this Court lacks jurisdiction to determine any pendent statutory question;

(b) The Court lacks jurisdiction under 28 U.S.C. Sec. 1331 in that plaintiffs have not satisfied the requirements thereof;

(c) The Court lacks jurisdiction in that the cause of action has become moot as matter of law by reason of the mandate of the Supreme Court of the United States and plaintiffs' failure to comply therewith.

FOURTH AFFIRMATIVE DEFENSE:

9. The Court lacks jurisdiction to award damages as prayed for in the amended complaint against defendant.

FIFTH AFFIRMATIVE DEFENSE:

10. The plaintiffs lack standing to maintain this action and lack capacity to sue.

SIXTH AFFIRMATIVE DEFENSE:

11. There is no actual case or controversy before the Court; there is no justiciable controversy before the Court.

SEVENTH AFFIRMATIVE DEFENSE:

DEFENDANT ALLEGES, UPON INFORMATION AND BELIEF:

12. That New York Social Services Law, Sec. 353 provides for an administrative appeal to the State Department of Social Services from the action or failure to act of a local Social Services official, and for a Fair Hearing thereon.

13. That intervening plaintiff Anna Stuck has received a Fair Hearing and "Decision After Fair Hearing" dated March 7, 1973.

14. That plaintiffs Shirley, Anderson, and Doe (B.H.) have not applied pursuant to Section 353 of the New York Social Services Law for an administrative appeal arising out of circumstances connected with this case.

15. That the plaintiffs, other than the intervening plaintiff Anna Stuck, have failed to exhaust administrative remedies. Said plaintiffs and intervening plaintiffs have failed to exhaust State judicial remedies.

EIGHTH AFFIRMATIVE DEFENSES:

16. New York Social Services Law, Sec. 101-A(2) (3) is valid and constitutional.

WHEREFORE defendant Lascaris prays that this Court:

(a) Deny the injunctive, declaratory and other relief sought by the plaintiffs;

(b) Dismiss the amended complaint and the action or, in the alternative, declare that New York Social Services Law, Sec. 101-a(2) (3) is valid and constitutional;

(c) That defendant Lascaris have such other, further and different relief as to the Court may seem just and proper, together with costs and disbursements.

JAMES H. HUGHES,
Assistant Welfare Attorney,
Of Counsel.

JOHN L. LaPARO,
Assistant Welfare Attorney,
State of New York,
Attorney for Defendant Lascaris.
Office and P. O. Address,
600 S. State Street,
Syracuse, New York 13202.
Telephone: (315) 477-7125.

Memorandum-Decision and Order of the Court

(Printed in full in Appendices to the Jurisdictional Statements of the State and County Appellants.)

Notice of Appeal of County Appellant

Nov 2 1973

Solicitor General
Docket Clerk
ed

Mr. Rubenstein

U. S. District Court
N. D. of N. Y.
Filed
Oct 31 1973
At ..... O'Clock ..... M.
J. R. Scully, Clerk
Utica

Received
Nov 2 1973
Department of Law
Albany Office

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

Notice is hereby given that defendant John Lascaris, Individually and as Commissioner of the Department of Social Services of the County of Onondaga, hereby appeals to the Supreme Court of the United States from the final order entered in this action on September 26, 1973, as amended on October 4, 1973, granting plaintiff, Anna Stuck summary judgment declaring that New York Social Serv-

ices Law, § 101-a is unenforceable and without effect insofar as it makes recipient cooperation in a paternity or support action against an absent parent a condition of eligibility for AFDC and permanently enjoining defendants from denying or terminating AFDC assistance to plaintiff Anna Stuck or her minor children for failure to cooperate in obtaining support from an absent parent of her children, and defendant, John Lascaris appeals from each and every part of that order.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Dated: Syracuse, New York, October 26, 1973.

PHILIP C. PINSKY,
Chief Welfare Attorney,
Attorney for Defendant, John Lascaris,
Onondaga County Dept. of Social Services,
600 South State Street,
Syracuse, New York 13202 (315) 477-7125.

Entered in Docket
Nov 2 1973

Notice of Appeal of County Appellant.

Affidavit of Service by Mail

State of New York,)
County of Onondaga.) ss.:

CELIA SKANDALIS, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides in the City of Syracuse, County of Onondaga, New York. That on the 29th day of October, deponent served the within Notice of Appeal upon Douglas A. Eldridge, Esq., Attorney for Plaintiffs in the within action, at Onondaga Neighborhood Legal Services, Inc., 633 South Warren Street, Syracuse, New York; and also upon Alan W. Rubenstein, Principal Attorney, c/o the Attorney General's office, attorney for defendant, Abe Lavine, at the Department of Law, The Capitol, Albany, New York; those being the addresses designated by said attorneys for that purpose, by depositing true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

CELIA SKANDALIS.

Sworn to before me this
29th day of October, 1973.
Philip C. Pinsky,
Notary Public.

Notice of Appeal of State Appellant

U. S. District Court
N. D. of N. Y.
Filed
Nov 14 1973
At ..... O'Clock .....M.
J. R. Scully, Clerk
Utica

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

(Title Omitted in Printing.)

Notice is hereby given that defendant Abe Lavine, individually and as Commissioner of the Department of Social Services of the State of New York, hereby appeals to the Supreme Court of the United States from the final order entered in this action on September 26, 1973, as amended on October 4, 1973, which (1) denied summary judgment to defendants and granted summary judgment in favor of the plaintiff Anna Stuck against defendants declaring section 101-a, as amended, of the New York Social Services Law void, unenforceable and without effect insofar as it makes recipient cooperation in a paternity or support action against an absent parent a condition of eligibility for AFDC, and (2) permanently enjoined defendants from denying or terminating AFDC assistance to plaintiff Anna Stuck for failure to cooperate in obtaining support from an absent parent of her children, and defendant Lavine appeals from each and every part of that order except that no appeal is taken from those parts of that order which (a) permanently enjoined defendants

from denying or terminating AFDC assistance to the minor children of Anna Stuck as provided in that order; (b) denied "class action status"; and (c) denied "plaintiff's demand for retroactive payment of the amounts wrongfully withheld from her."

This appeal is taken pursuant to 28 U.S.C. § 1253.

Dated: Albany, New York, November 13, 1973.

LOUIS J. LEFKOWITZ,
Attorney General of the State
of New York,

By ALAN W. RUBENSTEIN,
Principal Attorney,
Attorney for Defendant Lavine,
Department of Law,
The Capitol,
Albany, New York 12224,
Telephone: (518) 474-7178.

To:

Honorable J. R. Scully, Clerk,
United States District Court for
the Northern District of New York,
Federal Building,
Utica, New York 13503.

Douglas A. Eldridge, Esq.,
Attorney for Plaintiffs,
Onondaga Neighborhood Legal Services, Inc.,
633 South Warren Street,
Syracuse, New York 13202.

Notice of Appeal of State Appellant.

Philip C. Pinsky, Esq.,
Chief Welfare Attorney,
Attorney for Defendant Lascaris,
Onondaga County Department
of Social Services,
600 South State Street,
Syracuse, New York 13202.

John B. LaParo, Esq.,
Welfare Attorney,
Attorney for Defendant Lascaris,
Onondaga County Department
of Social Services,
600 South State Street,
Syracuse, New York 13202.

State of New York,)
County of Albany.) ss.:

ALAN W. RUBENSTEIN, being duly sworn, deposes and says:

That I am a Principal Attorney in the office of the Attorney General of the State of New York, attorney for the defendant Lavine herein, and am a member of the Bar of this Court. I am not a party to this action.

On the 13th day of November, 1973, I served the annexed Notice of Appeal to the Supreme Court of the United States upon each of the attorneys named below, by depositing a true copy thereof, properly enclosed in a sealed, first-class postpaid wrapper, in the letter box of the Capitol

Notice of Appeal of State Appellant.

Station post office in the City of Albany, New York, a depository under the exclusive care and custody of the United States Post Office Department, directed to each of the said attorneys at the addresses within the State respectively theretofore designated by them for that purpose, as follows:

Douglas A. Eldridge Esq.
Onondaga Neighborhood Legal Services, Inc.
633 South Warren Street
Syracuse, New York 13202

Philip C. Pinsky, Esq.
Chief Welfare Attorney
Onondaga County Department of Social Services
600 South State Street
Syracuse, New York 13202

John B. LaParo, Esq.
Welfare Attorney
Onondaga County Department of Social Services
600 South State Street
Syracuse, New York 13202

All parties required to be served have been served.

ALAN W. RUBENSTEIN.

Sworn to before me this
13th day of November, 1973.
Dennis Hurley,
Notary Public, State of New York.
Qualified in Albany County.
Commission expires March 30, 1975.

Letter Dated June 10, 1974.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

June 10, 1974

Mrs. Ruth Kessler Toch
Solicitor General of New York
Department of Law, The Capitol
Albany, New York 12224

RE: LASCARIS v. SHIRLEY, No. 73-1016;
LAVINE v. SHIRLEY, No. 73-1095

Dear Mrs. Toch:

The Court today took the following action in the above cases:

"The motion of appellee Stuck for leave to proceed *in forma pauperis* is granted. In these cases probable jurisdiction is noted. The cases are consolidated and a total of one hour is allotted for oral argument."

Enclosed are memorandums describing the time requirements and procedures under the Rules.

The additional docketing fee of $50, Rule 52(a) is due and payable.

Very truly yours,

MICHAEL RODAK, JR., *Clerk*

By HELEN K. LOUGHRAN
(Mrs.) Helen K. Loughran
Assistant Clerk

AIR MAIL

Encls.